

1 UNITED STATES BANKRUPTCY COURT  
 2 DISTRICT OF NEVADA  
 3 LAS VEGAS, NEVADA  
 In re: USA COMMERCIAL MORTGAGE ) E-Filed: 08/17/10  
 4 COMPANY, )  
 Debtor. ) Case No.  
 5 ) BK-S-06-10725-LBR  
 ) Chapter 11

6 PARTIAL TRANSCRIPT OF PROCEEDINGS  
 7 OF  
 MOTION TO AUTHORIZE DEBTOR, USA COMMERCIAL MORTGAGE COMPANY,  
 8 AS LOAN SERVICER TO APPROVE LOAN MODIFICATION  
 FOR PALM HARBOR ONE LOAN,  
 9 TO PROVIDE THE PREVIOUSLY-AUTHORIZED SUBORDINATION  
 OF THE MARLTON SQUARE 2ND LOAN IN CONNECTION  
 10 WITH THE PAYOFF OF THE MARLTON SQUARE 1ST LOAN,  
 TO AUTHORIZE A SHORT-TERM FORBEARANCE  
 11 FOR THE MARLTON SQUARE 1ST LOAN,  
 AND TO GENERALLY AUTHORIZE SHORT-TERM LOAN FORBEARANCES  
 12 AND FULL RELEASES AND RECONVEYANCES  
 FOR LANS PAID OFF IN FULL, NO. 1448  
 AND  
 13 MOTION FOR ORDER APPROVING CONTINUED USE OF CASH  
 THROUGH JANUARY 31, 2007,  
 14 PURSUANT TO FOURTH REVISED BUDGET, NO. 1452  
 AND  
 15 ORDER SHORTENING TIME RE: MOTION TO EXCLUDE DEBTORS  
 FROM HAVING TO FILE INTERCOMPANY CLAIMS  
 16 AGAINST EACH OTHER BY THE BAR DATE,  
 OR, ALTERNATIVELY,  
 17 FOR THE APPROVAL OF THE IMMEDIATE APPOINTMENT  
 OF SPECIAL COUNSEL  
 18 TO FILE AND PURSUE THE INTERCOMPANY DEBTOR CLAIMS, NO. 1519  
 AND  
 19 MOTION TO CONVERT CASE TO CHAPTER 7, NO. 1661  
 VOLUME 2  
 20 BEFORE THE HONORABLE LINDA B. RIEGLE  
 21 UNITED STATES BANKRUPTCY JUDGE

Monday, October 30, 2006

10:30 a.m.

22 Court Recorder: Cathy Shim

23 Proceedings recorded by electronic sound recording;  
 24 transcript produced by transcription service.  
 25

## 1 APPEARANCES:

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8 For the First Trust EVE H. KARASIK, ESQ.  
9 Deed Fund Committee: Stutman, Treister & Glatt, P.C.  
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11 CANDACE C. CARLYON, ESQ.  
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14 For the Canepa Group: LAUREL E. DAVIS, ESQ.  
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17 For the Direct GREGORY E. GARMAN, ESQ.  
18 Lenders Committee: Gordon & Silver, Ltd.  
19 3960 Howard Hughes Parkway  
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20 For Diversified Trust ANNE M. LORADITCH, ESQ.  
21 Deed Fund Committee: Beckley Singleton, Chtd.  
22 530 Las Vegas Boulevard South  
Las Vegas, Nevada 89101

23 For Drs. Alexander ROBERT C. LePOME, ESQ.  
24 and Others: Law Offices of Robert C. LePome  
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## 1 APPEARANCES (Cont.):

2 For the MacDonald JEFFREY L. HARTMAN, ESQ.  
3 Center for Arts and Hartman & Hartman  
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5 For the Official ROB CHARLES, JR., ESQ.  
6 Unsecured Creditors Lewis and Roca, LLP  
7 Committee: 3993 Howard Hughes Parkway  
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Las Vegas, Nevada 89109

8 For the United States AUGUST B. LANDIS, ESQ.  
9 Trustee: Office of the United States Trustee  
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10 Suite 4300  
Las Vegas, Nevada 89101

11 Also Present: DON WALKER  
12 Committee Chair  
Official Unsecured Creditors Committee

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1 (Court convened at 10:44:36 a.m.)

2 (Partial transcript.)

3 THE CLERK: Bankruptcy court is now in session.

4 (Colloquy not on the record.)

5 THE COURT: Be seated. Okay.

6 (Colloquy not on the record.)

7 THE COURT: USA Commercial.

8 Appearances, please.

9 (Colloquy not on the record.)

10 MR. SCHWARTZER: Lenard Schwartz and Annette Jarvis  
11 for the debtors and debtors in possession.

12 MS. KARASIK: Good morning, your Honor. Eve Karasik,  
13 Stutman, Treister & Glatt, Professional Corporation, on behalf  
14 of the First Trust Deed Fund Committee.

15 MS. CARLYON: Good morning, your Honor.  
16 Candace Carlyon of Shea & Carlyon for the First Trust Deed Fund  
17 Committee.

18 MS. DAVIS: Good morning, your Honor. Laurel Davis  
19 of Lionel, Sawyer & Collins on behalf of the Canepa Group.

20 MR. GARMAN: Your Honor, Greg Garman on behalf of the  
21 Executory Contract Committee or the Direct Lender Committee.

22 MS. LORADITCH: Good morning, your Honor.  
23 Anne Loraditch of Beckley Singleton, Chartered, on behalf of  
24 the Diversified Trust Deed Fund Committee.

25 MR. LePOME: Robert LePome, Drs. Alexander and

1 others.

2 MR. HARTMAN: Good morning, your Honor. Jeff Hartman  
3 for the MacDonald Center for the Arts and Humanities.

4 MR. CHARLES: Your Honor, Rob Charles from  
5 Lewis and Roca. We represent the Official Unsecured Creditors  
6 Committee of the USA Commercial Mortgage Company, and  
7 Don Walker, our Committee Chair, is present in the courtroom.

8 MR. LANDIS: Augie Landis, Assistant United States  
9 Trustee, for the Department of Justice through the  
10 United States Trustee's Office.

11 THE COURT: Okay. All right. Let's get rid of the  
12 first matter, the omnibus objection. That had already been  
13 taken care of, correct? I think all we had left was Highland  
14 which has then been withdrawn?

15 MS. CARLYON: Yes, your Honor. That is correct, so  
16 both of those matters were previously resolved.

17 THE COURT: Okay. So No. 1 is completed, and, No. 2,  
18 Highland withdrew their claim, so that's granted. Okay. All  
19 right.

20 Let's skip to the motion to convert because that obviously  
21 affects how other things proceed in the case. First, let me  
22 just for the record indicate the timing on this motion just so  
23 the record's clear.

24 The U.S. Trustee filed this motion last week and noticed  
25 it on the calendar for the November hearing. When the parties

1 made me aware of that last week, I thought it best that that  
2 matter be heard sooner, rather than later, because of the  
3 uncertainty it creates and because of my schedule.

4 I understand the day's a very short time. But because of  
5 my schedule, the earliest I could have heard it was the 7th  
6 which again creates uncertainty.

7 The U.S. Trustee's Office consented to having it earlier.  
8 They refused to consent to go beyond the 30 days and then the  
9 15 days. And, of course, that would have put us right in the  
10 middle of the sale process, so that's why I shortened the time.

11 Obviously, there's no harm to the movant because the  
12 movant is the one that made the motion. The only potential  
13 harm would be to those opposing.

14 However, I believe that the debtors and all the  
15 constituencies consented to having it heard on shortened time  
16 and, indeed, have filed oppositions to resolve the uncertainty  
17 issue, so just a note about that timing. Okay.

18 Go ahead, Mr. Landis, with that in mind.

19 MR. LANDIS: Thank you, your Honor. And may it  
20 please the Court, Counsel, the motion that brings us here  
21 today, Judge, is the United States Trustee's motion to convert  
22 these cases to Chapter 7.

23 I understand that the scope of evidence that will be  
24 allowed in support of our motion is limited to matters of  
25 record at the time that the motion was filed.

1           It's a huge docket. Rather than to simply ask the Court  
2           to take judicial notice of all aspects, I have narrowed it down  
3           to a series of categories of documents.

4           If the Court will indulge me, I'll identify those matters  
5           that we would ask the Court to take judicial notice of in  
6           support of our motion.

7           THE COURT: Okay. Is there any reason you didn't do  
8           that in your motion?

9           MR. LANDIS: Your Honor, in connection with the  
10          hearing, we believed that we would be able to present evidence  
11          through testimony if necessary. We believe that given the  
12          short time we didn't even have an opportunity to amend the  
13          motion further.

14          The bottom line is we want to simply make the Court aware  
15          of the facts as we knew them at the time that the motion was  
16          filed.

17          THE COURT: Well, but it seems to me -- and you've  
18          heard me also, you know, castigate the debtors. When you file  
19          motions in this case, you've got to support -- you should file  
20          it with the appropriate evidence be it judicial notice or  
21          declaration, and that's fine.

22          I understand. I can take judicial notice at any time, but  
23          it certainly would have made everybody's life easier if you had  
24          identified those things in the motion since you're the one that  
25          chose the motion. You're the one that chose to file it when

1       you did.

2               MR. LANDIS: Your --

3               THE COURT: Nobody --

4               MR. LANDIS: Your --

5               THE COURT: -- was pressuring --

6               MR. LANDIS: That --

7               THE COURT: -- you to file it a certain time. You  
8       made that decision.

9               MR. LANDIS: We'll come back to that because I will  
10       address the timing-of-the-motion question because I think  
11       that's a concern to the Court.

12              But you will hear from the items that we're identifying  
13       that this is not an effort to sandbag anyone, Judge. The  
14       motions or the actions, items, that we're asking to have  
15       judicial notice taken of are all matters that were filed either  
16       by the debtors or related parties in connection with this  
17       matter.

18              So there is no surprise. They're aware of what the  
19       facts are as based on the judicial-notice requests that will  
20       follow.

21              The first series of judicial-notice requests we're asking  
22       the Court to take judicial notice of are the monthly-operating  
23       reports for USA Commercial Mortgage. Those docket entries are  
24       327, 791, 926, 927, 928, 1176, 1338, and 1671.

25              The second category of reports is the monthly-operating



1 reports for USA Capital Realty Advisors, Docket Entries 328,  
2 792, 917, 918, 919, 920, 921, 1175, 1339, and 1615.

3 The third category is the monthly-operating reports for  
4 the Diversified Trust Deed Fund, Docket Entries 329, 793, 923,  
5 924, 925, 1173, 1340, and 1616.

6 The fourth category are the monthly-operating reports for  
7 the First Trust Deed Fund, Docket Entries 330, 794, 929, 930,  
8 931, 1174, 1341, and 1618.

9 The last in the series of monthly-operating reports are  
10 those filed on behalf of USA Securities, LLC, Docket Entries  
11 331, 795, 922, 1177, 1342, and 1617.

12 The next category of items we're asking the Court to take  
13 judicial notice of are the declarations filed with the court by  
14 Thomas J. Allison on behalf of the debtors, Docket Entries 9,  
15 130, 267, 347, 449, 648, 702, 750, 955, 957, 1090, 1430, 1435,  
16 1578, 1633, and 1671.

17 The next category of documents, Judge, are simply the loan  
18 summaries filed by the debtors in the case to date,  
19 Docket Entries 418, 967, 1329, and 1621.

20 We would also ask the Court to take judicial notice of the  
21 motion for the order authorizing reimbursement of due-diligence  
22 expenses of the potential postpetition lender. Docket Entries  
23 171 is the motion, and 702 is the order denying.

24 The next category is the denial of the motion for  
25 emergency interim and permanent orders authorizing the debtors

1 to obtain postpetition financing. Docket Entries 588 is the  
2 motion. 835 is the order denying.

3 With respect to the Fertitta Enterprises motion to provide  
4 financing for the Rio Rancho loan I believe it was, we'd ask  
5 the Court to take judicial notice of Docket Entries 1085, 1103,  
6 1125, and 1128 which was the order granting.

7 The good news is, Judge, the rest of these are very short.  
8 We'd ask the Court to take judicial notice of the motion to  
9 exclude the debtors from having to file intercompany claims,  
10 Docket 1454, the motion for order approving retention plan of  
11 debtor's remaining employees, Docket 1429, the debtor's joint  
12 disclosure statement, Docket 1309, the debtor's plan of  
13 reorganization as amended to date, Docket Entries 1310 and  
14 1576, the auction-sale notice, Docket No. 1352, the asset  
15 purchase agreement Docket No. 1603, and, finally, Judge, the  
16 petitions and schedules filed in these five cases as amended to  
17 date.

18 That would conclude our offer of proof with respect to  
19 request being judicial notice of those matters, your Honor. We  
20 would appreciate a ruling as to whether or not the Court will  
21 take judicial notice of those facts in connection with our  
22 motion.

23 THE COURT: All right. Any comments, objections?

24 MS. CARLYON: Your Honor, I feel somewhat  
25 blind-sided. Are copies of those documents available for the

1 Court and all counsel to review?

2 MR. LANDIS: Your Honor, they were filed of record  
3 months and months ago.

4 THE COURT: I understand, but it's still troublesome  
5 why you chose not to refer to any specifics in your motion as  
6 opposed to making generalities. I mean, motions are made and  
7 supported. It's your burden of proof.

8 MS. CARLYON: This --

9 THE COURT: I --

10 MS. CARLYON: This is a suggestion, your Honor. The  
11 last thing I want to do is to have an issue on appeal or an  
12 appeal created to further divert our attention.

13 I certainly have no objection to taking judicial notice of  
14 the specific pleadings referenced in the motion to convert, and  
15 there were several.

16 Further, I have no objection to Mr. Landis arguing  
17 any matters that are within the record before this  
18 Court.

19 At the end of the day if such matters which were not  
20 referenced in the motion may form a basis of granting the  
21 motion, I would like a short amount of time for us to review  
22 and respond because that's what we haven't had.

23 THE COURT: Okay. All right. So for purpose of  
24 argument, I'll take judicial notice of those items with  
25 depending upon I need to give the opponents time to review any

1 of those matters.

2 MR. LANDIS: So the Court is taking judicial  
3 notice --

4 THE COURT: I will.

5 MR. LANDIS: -- of those matters?

6 Thank you, your Honor.

7 THE COURT: Although, again, that does not excuse  
8 your failure to having identified those at the beginning.

9 MR. LANDIS: Your Honor, I think in fairness there  
10 were a number of those that I ran through that are, in fact, in  
11 the motion; however, it's not complete, and I understand the  
12 Court's guidance, and we'll follow it.

13 Getting to the heart of the matter, the first issue that's  
14 presented here is as I read the objections that were filed is  
15 whether or not the United States Trustee has statutory standing  
16 to file its motion to convert or dismiss these  
17 jointly-administered cases.

18 Right out of the blocks, Judge, one of the concerns that  
19 the Court expressed at the prior hearing was why now,  
20 Mr. Landis. Well, what are you doing? What are you thinking?

21 And the answer is is that there is a congressional mandate  
22 directed to the Office of the United States Trustee that  
23 requires us to file motions to convert under Section 1112(b),  
24 specifically, 28, USC, Section 586(a)(8).

25 And I'll see if I can substitute it for those pretty

1 flowers up there, and I don't know if there's any good way to  
2 lessen that.

3 (Colloquy not on the record.)

4 MR. LANDIS: You can't see that, can you?

5 THE COURT: I have my copy.

6 MR. LANDIS: Okay. Section 586(a)(8) provides,  
7 generally, duties, supervision by Attorney General,  
8 Subsection A, "Each United States Trustee within the region for  
9 which such United States Trustee is appointed shall."

10 Subsection 8, "In any case in which the United States  
11 Trustee finds material grounds for any relief under  
12 Section 1112 of Title 11, the United States Trustee shall apply  
13 promptly after making that finding to the Court for relief."  
14 We didn't have any choice, Judge. We had to file the motion.

15 Based upon the facts as we knew them, based upon the  
16 record before the Court, and the information filed by the  
17 debtors in connection with their plan, and then their efforts  
18 to liquidate their operating entity and their solvent fund, we  
19 had no option.

20 With respect to our unwillingness to extend the  
21 30-day deadline, the reason for that is statutory.  
22 Section 1112(b)(3) --

23 THE COURT: No. You can clearly consent to that.

24 MR. LANDIS: 1112(b)(3) requires that, "The Court  
25 commence the hearing under this subsection not later than

1 30 days after the filing of the motion unless the movant  
2 expressly consents to a continuance for a specific period of  
3 time or compelling circumstances prevent the Court from meeting  
4 the time limits."

5 Let me tell you the reason why. You hit on it at the last  
6 hearing, Judge. We filed our motion at the last date where  
7 giving full notice would allow that matter to be heard before  
8 the sale was set. That's the reason that we chose the omnibus  
9 hearing date that we chose.

10 You also know that we had no problem coming into this  
11 court in a hurry in order to get this issue resolved because  
12 it's in the best interests of the parties here, and it's  
13 important to the Court to have the opportunity to consider this  
14 giving us the congressional mandate that we have.

15 With respect to statutory standing, also, of course,  
16 11, USC, Section 307 provides that, "The United States Trustee  
17 may raise and appear and be heard on any issue in any case or  
18 proceeding under this title." We certainly didn't file a plan,  
19 so we didn't run afoul of Section 307.

20 We have the right to be here, Judge, and we have to be  
21 here, and that's the reason for the filing of the motion and  
22 the reason for the timing of it.

23 When we became confident that the motion had a factual  
24 basis and a legal basis well, we filed it at a point in time  
25 that would allow the Court to hear it before the parties

1 incurred the cost of sale.

2 The real issue here, Judge, begins with a question of  
3 cause. The question of cause, in this case, the United States  
4 Trustee hangs its hat on the provisions on the  
5 11, USC, Section 1112(b)(4).

6 There's a two-pronged analysis under that section, Judge,  
7 and I know the Court's familiar with it. For purposes of this  
8 subsection, "The term 'cause' includes substantial or  
9 continuing loss to or diminution of the estate in the absence  
10 of a reasonable likelihood of rehabilitation," not  
11 reorganization. It is not the United States Trustee's position  
12 that there could never be a liquidating Chapter 11 case.

13 The question here is simply whether the standards exist  
14 for conversion of these five interrelated Chapter 11s at this  
15 time, and we believe that they do for the following reasons:

16 In determining whether conversion is appropriate under  
17 1112(b) under the interpretation that the Courts give that  
18 provision, "A negative cash-flow situation alone is sufficient  
19 to establish continuing loss or diminution of the estate."  
20 We've cited you the cases in our motion. There's no surprise  
21 there.

22 Whereas in this case, a debtor has ceased business  
23 operations. Now, they haven't, yet, but they will as soon as  
24 they sell USA Commercial Mortgage's loan-servicing assets and  
25 significantly all of the assets of the First Trust Deed Fund,

1 including that resulting only for administrative expenses, and  
2 we'll leave that aside for now.

3 Effectively, it comes straight from the pockets of the  
4 creditors. This is enough to satisfy the first element of  
5 Section 1112(b).

6 I've cited you the Loop case which is an  
7 Eighth Circuit case not binding on this Court, but it is  
8 certiorari denied for purposes of analysis of the first prong  
9 of Section 1112(b)(4).

10 Proof with respect to the question of substantial loss,  
11 there was a \$3,643,179 operating loss for USA Commercial  
12 Mortgage in the month of July alone, and the fact of that is  
13 established by the monthly-operating report for July. That's  
14 Docket Entry 1176, page 2, line 4.

15 Continuing loss, losses in excess of \$300,000 in July and  
16 August. In particular, July obviously was 3,000,000, but  
17 you're looking at an additional approximately \$300,000 in  
18 August.

19 And I heard the Court's warning to me in a prior hearing  
20 don't talk about September, but there is a September operating  
21 report, Judge.

22 With respect to the total operating loss from continued  
23 operations postpetition, you'll find that there was \$1,416,110  
24 loss at the end of August. That's Docket Entry 1338.

25 The bottom line, Judge, faced with those issues and the



1 postpetition operating losses of the operating entity among the  
2 debtors, there is, in fact, in this case facing the Court both  
3 a substantial and a continuing loss or diminution of the  
4 various estates in this case.

5 The second question then becomes whether there is an  
6 absence of a reasonable likelihood of rehabilitation, not  
7 reorganization.

8 Rehabilitation is specifically used in Section 1112(b)(4).  
9 It chose not to use reorganization. The question is this.  
10 Courts have consistently understood rehabilitation to refer to  
11 the debtor's ability to restore the viability of its business.

12 Again, I gave you the Loop case. You can look at  
13 Cannock Realty Trust (phonetic) and the other matters that we  
14 have cited for you, Judge.

15 A reasonable likelihood of rehabilitation is lacking, for  
16 example, in cases where the debtor lacks income, operating  
17 funds, employees, capital, or continuing revenue-generating  
18 activity.

19 We did find a Ninth Circuit case with respect to the lack  
20 income. We cited you the Johnston case,  
21 149 Bankruptcy Reporter 158, 160. It's a BAP decision from  
22 Nevada in 1992. You're probably well familiar with it.

23 Debtors have generated income in this case only from the  
24 collection of loans that existed prior to the filing of this  
25 bankruptcy case, and the reason is evident from matters of

1 record.

2 If you look at the motion where the debtors sought to have  
3 Fertitta fund existing loans, Docket Entry 1085 at  
4 paragraph 15, Debtor USA Commercial Mortgage's license to  
5 broker additional loan advances on the loans that it has  
6 originated by locating funds from private investors has been  
7 suspended by the Nevada Mortgage Lending Division in the  
8 absence of further authorization from the Division. There's  
9 matters in the record that show why USA Commercial Mortgage  
10 isn't able to continue to do business.

11 It's evident that the debtors haven't generated any income  
12 from postpetition operations especially when you look at  
13 USA Commercial Mortgage's performance. It has incurred  
14 operating losses totally \$1,416,110 as of the end of August,  
15 Docket Entry 1338.

16 The debtors knew they were in trouble. They knew they  
17 needed postpetition financing, and they came to this Court not  
18 once, but two different times trying to get it. They failed to  
19 obtain that financing both times they were here.

20 They sought to have the Court approve a \$150,000  
21 due-diligence fee in order to obtain financing through Fortress  
22 and were unsuccessful, Docket Entries 171 and 702, the motion  
23 and the order denying.

24 They then came back promptly with a motion for emergency  
25 interim and permanent orders authorizing the debtors to obtain

1 postpetition financing and again were denied, Docket Entries  
2 588 and 835.

3 The significance of that is evident from the fifth  
4 supplemental declaration Mr. Allison filed in support of the  
5 debtor's motions on June 20th, 2006, Docket No. 750.

6 There has got to be a better way.

7 THE CLERK: I think there's the (indiscernible).

8 MR. LANDIS: Well, that's a little better.

9 THE CLERK: Yeah.

10 MR. LANDIS: I don't know if it's great or not.

11 THE CLERK: That's perfect.

12 MR. LANDIS: "Debtors need liquidity to fund the  
13 administrative and operational expenses that are set forth in  
14 the revised budget because of the irregularity of payments on  
15 the loans from which the debtor's servicing fees and other  
16 contractual costs and fees are paid.

17 While I, Mr. Allison, have initiated and accelerated  
18 measures to collect unpaid interest on the nonperforming loans  
19 and implemented improved loan-servicing procedures for all of  
20 the loans being serviced by USACM, even with these operational  
21 enhancement, the regular payment streams to USACM as servicer  
22 of the loans has been disrupted because of the filing of the  
23 debtor's bankruptcy petitions.

24 I further believe based on my experience, extensive  
25 interaction with borrowers, the lack of immediate

1 debtor-in-possession financing to ensure adequate collection  
2 efforts will only work to accelerate this disruption of regular  
3 payment streams further.

4 Additionally, the regular payment stream has been  
5 diminished due to the large number of nonperforming loans.  
6 Accordingly, the cash collections that are set forth in the  
7 revised budgets are only projections.

8 As a result, it is entirely possible the debtors will not  
9 realize the full cash collections currently contemplated in the  
10 budget and are needed to fund the debtor's operational budget."  
11 They didn't get it. They didn't receive that financing.

12 The debtor's plan provides for the liquidation of the  
13 loan-servicing operations. That the only operating entity  
14 among the debtor is USA Commercial Mortgage and the most  
15 solvent investment fund.

16 You can look at the plan, your Honor, at Docket 1310  
17 and 1575 -- and I know you have -- and find that to be the  
18 case.

19 There isn't any doubt that the employee base has shrunk by  
20 approximately 80 percent postpetition, either. In fact, the  
21 debtors are seeking to retain the last 11 employees there by  
22 paying \$300,000 plus and incentives to keep them. That's the  
23 basis of the retention motion, Docket 1429.

24 And the decline is established by the Allison declaration,  
25 Docket No. 1430 at paragraphs 1 through 12, so where does that

1 leave us?

2 From the United States Trustee's perspective, it leaves us  
3 with a statutory mandate, shall file a motion to convert under  
4 1112(b), and that's what we did.

5 The question then becomes, Judge, if, in fact, cause  
6 exists -- and we believe that it does based upon the evidence  
7 before you that's in the docket -- what now?

8 The Court pointed out that there is also the possibility  
9 in some circumstances that under Section (b)(1),  
10 11, USC, Section 1112(b)(1), "Absent unusual circumstances  
11 specifically identified by the Court that establish the  
12 requested conversion or a dismissal is not in the best interest  
13 of creditors and the estate, the Court shall convert the case."

14 So the Court has an opportunity in appropriate cases to  
15 determine whether or not there is an exception to the  
16 requirement of conversion.

17 In order to establish whether or not that exception  
18 applies, you have to turn to Subsection (b)(2). That  
19 establishes the parameters under which an exception to  
20 conversion is appropriate.

21 That section provides, "The relief provided in paragraph 1  
22 shall not be granted absent unusual circumstances specifically  
23 identified by the Court that establish that such relief is not  
24 in the best interest of creditors and the estate.

25 If the debtor or another party in interest objects and

1 establishes that, A, there is a reasonable likelihood that a  
2 plan will be confirmed within the time frames established under  
3 the code," no real argument there, Judge.

4 They got a plan on file, and you've got a series of dates  
5 set that would allow them to have confirmation within the  
6 period of time that's been set, but it doesn't stop there.

7 And Subsection B, "The grounds for granting such relief  
8 include an act or omission of the debtor other than under  
9 paragraph 4-A for which there exists a reasonable justification  
10 for the act or omission, and that will be cured within a  
11 reasonable period of time fixed by the Court."

12 There isn't any allegation in our motion of any act or  
13 omission of the debtor other than under paragraph 4-A. Our  
14 motion is specific to the continuing loss or diminution of the  
15 estate in the absence of a likelihood of rehabilitation of  
16 these debtors given the facts before you.

17 As a result, there is no available exception, and the  
18 Court at this point as a result of the changes under the  
19 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005  
20 must -- and, in fact, the code says shall -- convert these  
21 cases to Chapter 7.

22 Your Honor, our position is as stated in the motion.  
23 You've been kind enough to hear me. You've been kind enough to  
24 allow me to provide you with the factual basis in an otherwise  
25 hefty docket that underpins the basis of our motion.

1           This is not a great way to make friends and influence  
2 people necessarily in this case, Judge, but we have a job to do  
3 and a statutory mandate to follow.

4           There is no reasonable likelihood of rehabilitation of the  
5 debtor's business operations. Cause exists for a conversion.  
6 Conversion must enter at this time, your Honor.

7           THE COURT: Okay.

8           MR. LANDIS: Thank you.

9           THE COURT: All right. Opposition.

10          (Colloquy not on the record.)

11          MS. JARVIS: Your Honor, let me first give a little  
12 more background to what has been accomplished since these  
13 bankruptcies were filed.

14          When you talk about the -- this is an ongoing business. I  
15 mean, whether this business has been generating new loans or  
16 not, it has been collecting loans. It has been servicing  
17 loans.

18          And that in and of itself is a business operation, a  
19 business operation that is important not only in generating  
20 revenues postpetition, but important in order to accomplish a  
21 sale because the sale is predicated on the buying of an ongoing  
22 business, not just assets, an ongoing servicing business.

23          That's evident when you look through not only what is  
24 being bought by Silver Point, but the many covenants that are  
25 contained in that asset purchase agreement with respect to the

1 ongoing operations of the debtor, so it is a business that is  
2 ongoing.

3 Since the bankruptcy was filed, 19 loans have been  
4 collected with a total principal amount of approximately  
5 \$145,000,000.

6 The total interest collected has been approximately  
7 \$38,000,000. The total service fees which is income to this  
8 estate collected have been in excess of 2.7 million dollars.

9 Other fees collected have been approximately 1.2 million  
10 dollars. Prepaid interest that has been collected since the  
11 bankruptcy was filed is approximately 14.5 million dollars.

12 As of September 30th, there were 791 (sic) loans still  
13 outstanding on the books of Commercial Mortgage for servicing,  
14 many of those loans having a participation interest by both  
15 Diversified and --

16 (Colloquy not on the record.)

17 MS. JARVIS: -- sorry -- many of those also having a  
18 participation interest of the two funds which are also  
19 debtors. Let me correct myself. It's not 791 loans. It's  
20 \$791,000,000 in loans that are still outstanding.

21 As your Honor has repeatedly heard in hearings before  
22 your Honor, Mr. Allison and the employees of the debtors have  
23 worked hard in collecting loans. Many of those are now coming  
24 to fruition.

25 I would also add some additional information that I could



1 proffer or have Mr. Allison testify to that it is expected that  
2 as between now and January 31st which is the day that we  
3 project a closing for the sale that the bid procedures were  
4 approved for last week that he expects to receive a payoff of  
5 38 more loans with a total amount to be collected of  
6 \$322,000,000. That would leave a balance of 55 loans, a  
7 balance of \$469,000,000 outstanding.

8 These loans in collecting these, if the \$322,000,000 is  
9 collected, that would include 2.8 million dollars in servicing  
10 fees collected between now and January 31st, other fees of  
11 5.1 million dollars as well as continued amounts on the prepaid  
12 interest.

13 And, your Honor, whether these are collected now or  
14 between now and the closing date with Silver Point because of  
15 the way the asset purchase agreement was negotiated on behalf  
16 of these estates by the debtors and the committees, the fees  
17 remain, the accrued fees, and in some case even fees that  
18 accrue after the closing date stay with the estate.

19 So whether this is actually collected between now and  
20 January 31st, keeping this estate going continues to pay money  
21 into this estate because the accrued fees if collected by  
22 Silver Point after the closing will come back into the estate.

23 And those would include 5.8 million dollars more of  
24 service fees projected through January 31st of '07,  
25 23.8 million dollars more in prepaid interest, and other fees

1 of approximately 26.9 million dollars.

2 (Interruption via telephone at 11:17:15 a.m.)

3 THE OPERATOR: This is the operator. I'm sorry for  
4 the interruption.

5 MS. JARVIS: So there is --

6 THE OPERATOR: I'm one of the operators here --

7 MS. JARVIS: -- dramatically more --

8 THE OPERATOR: -- at the conference center.

9 THE COURT: Excuse me.

10 THE OPERATOR: And the caller --

11 THE COURT: Is someone talking --

12 THE OPERATOR: -- is saying --

13 THE COURT: -- on the phone?

14 THE OPERATOR: -- that they're not hearing anything.

15 THE COURT: Please stop talking on the phone.

16 THE OPERATOR: This is the operator. Are you there?

17 THE COURT: Yes.

18 THE OPERATOR: I see that you're the host on today's  
19 call?

20 THE COURT: What?

21 THE OPERATOR: This is the conference operator. I'm  
22 speaking only to you. I picked you up out of the call. Can  
23 you hear me?

24 THE COURT: This is the Court.

25 THE OPERATOR: Hello?

1 THE CLERK: She said she was the operator.

2 THE COURT: Right. But --

3 THE OPERATOR: The callers in this call cannot hear  
4 anything because there's nothing coming from the host line.

5 (Colloquy not on the record.)

6 THE COURT: Oh, do they --

7 THE OPERATOR: Okay. I'll release you back to the  
8 call if you would like to open up the line, so everyone can  
9 have a conference. Please press star 5.

10 Thank you.

11 (Colloquy not on the record.)

12 THE CLERK: I don't think I can do it from this end.  
13 I think we have to do it through our (indiscernible), so we'll  
14 hang up.

15 And we'll redo it the (indiscernible) redo it  
16 (indiscernible) the call because, evidently, we lost the patch,  
17 so should I redial?

18 THE COURT: I guess.

19 (Redialing at 11:18:23 a.m.)

20 (Colloquy not on the record.)

21 (Pause concluded at 11:20:58 a.m.)

22 THE COURT: Okay. Sorry.

23 Go ahead.

24 MS. JARVIS: Oh, no problem.

25 As I was saying, your Honor, other fees projected to

1 accrue through the 31st of January '07 is 26.9 million.

2 Now, to be clear, some of those fees may not be  
3 collectable. But if you look at the whole amount, this is a  
4 huge amount of fees and that can come into this estate if it  
5 continues operations, if it continues to be able to sell its  
6 business as a going concern under the asset purchase agreement.

7 And I raise this in the context, too, because against that  
8 is set the U.S. Trustee's assertion that based on the operating  
9 reports, the cash budgets that have been submitted, that he  
10 argues there is some continuing loss.

11 However, the Court in the Legacy Estate Group case which  
12 is a very new case out of the Northern District of California  
13 does comment on just briefly that blindly -- and it seems to  
14 say that blindly considering evidence of continuing loss or  
15 diminution from the operating reports is simply, you know, not  
16 appropriate.

17 These are cash reports. They are cash collections. They  
18 are, you know, cash disbursements. The budget is a cash  
19 budget, and that is different than looking at the entire  
20 picture of all the assets of this estate.

21 When you add to all these fees that are being generated by  
22 the continuing operations of this business, you also have a  
23 couple other components that need to be considered. That is  
24 the claims against IP.

25 Your Honor earlier approved an agreement with respect to

1 taking a security interest in IP, and there is also existing a  
2 claim of the 10-90 loan in Diversified against IP.

3 Those two loans alone are around \$120,000,000 of claims  
4 against IP that have yet to be monetized and completely  
5 pursued. Those are tied with the loans.

6 The importance of the servicing component ties into these  
7 insider claims that are important assets of this estate as well  
8 because as we've previously told the Court approximately  
9 15 percent of the loans that will be outstanding as of the end  
10 of January will be loans in which insiders have claims.

11 So protecting the interests of these loans protects not  
12 only the interest of the direct lenders, but, also, the  
13 interests of these estates in the underlying claims that they  
14 have against insiders.

15 I would state, your Honor, that with looking at this  
16 entire picture of all the assets of this estate, of the  
17 importance of the ongoing operations of this estate, and the  
18 collection of these fees I would assert that there is no proof  
19 of a continuing loss or diminution of the estate.

20 In fact, the evidence is just the opposite when you  
21 consider the affidavit or the declaration of Mr. Allison with  
22 respect to the value that has come into this estate since  
23 filing, the books and records being corrected and put in a  
24 state where there can actually be a sale of assets in this  
25 estate which would not have been possible before this time, the

1 collections of the loans and fees which previously had not been  
2 collected.

3 And in many cases, the fees actually owed to this estate  
4 had just been allowed to either linger or not collected. That  
5 has been corrected. There has been, in fact, an increase in  
6 the estate since the bankruptcy was filed.

7 Mr. Landis talks about the Loop case. But in the Loop  
8 case, they actually had ceased business operations and  
9 continued.

10 In this case, there are business operations continuing.  
11 There are fees continuing to accrue. There are fees continuing  
12 to be collected, and that is an important difference.

13 Further, he talks about in referring to the standard in  
14 1112 there is also the issue of the absence of a reasonable  
15 likelihood of rehabilitation.

16 You know, in addition to the fact that there is a  
17 continuing business that needs to keep going, there are  
18 different ways of looking at it.

19 Even if you accept his argument that rehabilitation can't  
20 mean a pure liquidation, there are different kinds of  
21 liquidation.

22 This is not a liquidation like in the Loop case. That the  
23 business operations have ceased. That we're just continuing on  
24 at this point in time with no source of income, with no  
25 operations.

1           This is a business where we are keeping it in business in  
2           order to sell. That is a type of rehabilitation,  
3           rehabilitating this business by keeping it as an ongoing  
4           concern and selling it as an ongoing concern.

5           And, therefore, I would submit that neither of those parts  
6           of cause, either continuing loss or the absence of a reasonable  
7           likelihood of rehabilitation, have been met in this case.

8           Even when these assets are sold, your Honor, there will be  
9           continuing fees coming in because of the way that the asset  
10          purchase agreement was negotiated with the buyer.

11          So they will become, in essence, a collection agent for  
12          returning and collecting and returning fees to this estate as  
13          well as the litigation that needs to be pursued.

14          Finally, I would also point out, your Honor, that this is  
15          a situation under 1112 where you can find unusual  
16          circumstances.

17          And, again, if you look at the Legacy case that we cited  
18          from the Northern District of California, that Court found  
19          exceptional circumstances, so that even if you found that the  
20          standard found in 1112(b)(4)(A) was met you still don't have to  
21          convert the case if you find these unusual circumstances.

22          And as the Court did in that case, there are some  
23          similarities between this. They found that there had been a  
24          substantial enhancement of the estate, including in a sale that  
25          took place in that case.

1           They noted the fact that the creditors committee and the  
2 debtor as in this case had in short order brought a plan before  
3 the Court that would expected to be confirmed over a reasonable  
4 period of time.

5           They again differentiated between the cash issues of an  
6 estate and the overall assets of the estate in finding that  
7 there was no substantial or continuing loss or diminution of  
8 the estate.

9           And, finally, they found that the professional fees  
10 allowed to date were reasonable and necessary considering the  
11 case. It was also a complicated case which this case is,  
12 your Honor.

13           I might also note that as we go forward and budget out  
14 fees we expect that those fees will diminish as the case goes  
15 on particularly with respect to the activities of Mesirow.

16           The accounting is substantially concluded. There will be  
17 a lot of things that need to be done going forward, but it's  
18 been carefully looked at with respect to those persons. And,  
19 again, as we get this plan in shape and go forward towards  
20 confirmation, those costs should diminish.

21           Finally, your Honor, I would just briefly state that with  
22 respect to the U.S. Trustee's standing, you know, it is simply  
23 a reading of the statute that they did. It was taken out in  
24 these amendments.

25           And so there is a question or a reason to question



1 whether, in fact, someone, the U.S. Trustee, without an  
2 economic stake in the outcome is a proper party to bring this  
3 motion.

4 We would submit, your Honor, that under all of the  
5 circumstances of this case that cause has not been shown to  
6 convert this case.

7 And that even if cause was shown the unusual circumstances  
8 are present in this case. That the Court should deny a motion  
9 to convert.

10 Thank you --

11 THE COURT: Okay.

12 MS. JARVIS: -- your Honor.

13 THE COURT: All right. Other opposition.

14 (Colloquy not on the record.)

15 MS. KARASIK: Good morning, your Honor. Eve Karasik  
16 on behalf of the First Trust Deed Fund. The First Trust Deed  
17 Fund supports the debtor's opposition.

18 I just wanted to emphasize that 1112(b)(4) has been in the  
19 code for a while. And even with that provision in the code,  
20 there's been a huge body of law that's created that's permitted  
21 liquidating Chapter 11 plans.

22 There's also provisions in the code itself that permits  
23 liquidating Chapter 11 plans. This is the case for a  
24 liquidating Chapter 11 plan.

25 We have a sale not only of the First Trust Deed Fund

1 assets, but of the servicing rights that's going to provide a  
2 qualified servicer to the direct lenders who need a servicer.

3 We have a joint term sheet, and, actually, I'm the initial  
4 draftsperson of that term sheet, and I can tell you it is  
5 moving rapidly. We are very close.

6 We have a handful of issues. We're actually going to meet  
7 today and try to resolve them because our goal is to get a  
8 modified plan that encompasses this term sheet finalized and,  
9 hopefully, drafted this week.

10 I'd like to point out what does Chapter 7 really give this  
11 group of cases. What happens under a Chapter 7? You end up,  
12 probably, with five trustees, five trustees with five sets of  
13 professionals all trying to figure out what happened in this  
14 case. You have an enormous amount of costs that's going to be  
15 layered on already an enormous amount of costs.

16 In addition, let's just look at the direct lenders for a  
17 second. Now, who's going to service their loan? The  
18 Chapter 7 Trustee isn't going to service their loans.

19 Is the Chapter 7 Trustee going to find somebody to sell  
20 all the loans to or is what's going to happen is that the  
21 direct lenders are going to each break off?

22 You know, let's say there's a loan with 300 different  
23 direct lenders on which there are a lot of them. You're going  
24 to have 60 different loan servicers for that one loan?

25 I just don't think the actual solution of a motion to

1 convert -- there's no solution. It doesn't help this case. It  
2 just dramatically hurts it.

3 And not only does it damage the sale process -- and I  
4 think there's enough declarations before this Court to show  
5 that -- I think we need to think about what does Chapter 7  
6 really do here.

7 Now, maybe you read the code. Technically, it says shall.  
8 You must convert, but this court is not a court of  
9 technicalities. It's a court of equity.

10 And the statute itself permits the Court to look beyond  
11 the actual cause standard where there are circumstances that  
12 justify it. I think if we look at what Chapter 7 would do in  
13 this case it would be an absolute disaster.

14 THE COURT: Okay.

15 MS. KARASIK: Thank you, your Honor.

16 THE COURT: Thank you.

17 Anyone else?

18 MR. CHARLES: Your Honor, Rob Charles on behalf of  
19 the Unsecured Creditors Committee. Our focus is a little  
20 different because there are not -- at least not yet valued by  
21 the market -- this materially-valuable assets of  
22 Commercial Mortgage that are being sold in this sale.

23 But there are materially-valuable assets in  
24 Commercial Mortgage that would be adversely affected by a  
25 conversion and really, conversely, have a higher value in a

1 reorganization which I think demonstrates that there is not a  
2 substantial or continuing loss, and let me give you the buckets  
3 of assets quickly and also for the benefit of folks who are  
4 listening.

5 The major asset in Commercial Mortgage is the \$58,000,000  
6 receivable against IP, and, presumably, a Chapter 7 Trustee  
7 could find that and prosecute it, but it exists today only  
8 because of the Chapter 11.

9 In other words, if Mesirow had not gone back and  
10 reconstructed out of the ledgers the sums that had been  
11 withdrawn by USAIP, that asset would not exist.

12 And so when the debtors talk about how Chapter 11 has  
13 increased the assets, they're not looking at it on a narrow  
14 income-statement basis the way Mr. Landis is.

15 They're looking at in the aggregate is there more value  
16 been created for the creditors in the Chapter 11, and the IP  
17 asset is one such example.

18 The second and biggest, the second-biggest asset, which is  
19 dramatically adversely affected by a conversion is the notion  
20 of prepaid interest.

21 You know that the former managers prepaid interest to  
22 lenders when the interest had not been received from the  
23 borrowers.

24 And that now as those payments, those interest payments,  
25 are being made by borrowers through Commercial Mortgage as a

1 servicing agent they're being captured. And, in addition, the  
2 lenders have been recouped for the prepaid interest they  
3 received.

4 In a Chapter 7 to make Ms. Karasik's point a little more  
5 bleak and a little more blunt, you have to reject the servicing  
6 agreements.

7 You cannot assume the servicing agreements. Why not?  
8 Because the servicer stole people's money, at least \$46,000,000  
9 of diverted principal.

10 You know you can't assume those servicing agreements  
11 because you can't cure or provide an adequate assurance of  
12 cure, and so what happens in a 7?

13 The Chapter 7 Trustee has 60 days, probably rejects the  
14 servicing agreements immediately because the trustee has no  
15 ability to service. How does that affect prepaid interest?

16 However payments are made, however borrowers make  
17 payments, it will no longer be through  
18 Commercial Mortgage.

19 Let's say that the Lord intervenes. And by a miracle, a  
20 new servicing agent is brought in for all of the lenders, and  
21 the new servicing agent deals directly with the lenders.

22 None of them are going to agree, gosh, it makes sense to  
23 send money back to Commercial Mortgage for the prepaid  
24 interest.

25 And Mr. LePome and Ms. Chubb have eloquently explained

1 why if you use equitable theories you can't get at those  
2 moneys.

3 So the only way the Chapter 7 Trustee could deal with the  
4 prepaid-interest issue is to bring fraudulent-transfer or  
5 avoidance actions against the lenders whose money is out there.

6 And the prepaid interest then turns from whatever the  
7 number is -- and you heard today they've collected at least  
8 25,000,000 of it -- into some much smaller number only after  
9 you net out dramatic litigation expenses, including suing  
10 thousands of people across this country.

11 The third biggest asset in Commercial Mortgage is the  
12 variety of interests that it has either as a lender and loans  
13 that are serviced or in fees.

14 And in both of those instances, but, particularly, in the  
15 fees, extension fees, exit fees, uncollected origination fees,  
16 those fees disappear in a conversion and liquidation. What's  
17 the amount of those?

18 As best we can tell off of the most recent loan-summary  
19 report, the accumulated origination fees not yet collected are  
20 about 4,000,000, servicing fees as Mr. Jarvis indicated over 6,  
21 extension fees as Ms. Jarvis indicated over 6, and exit fees of  
22 a rounded 20,000,000.

23 If you reject the servicing agreements, any obligation of  
24 a lender to allow those fees to be collected from a borrower  
25 and paid to Commercial Mortgage as the servicing agent

1 disappears.

2 At best, what you'd have is Commercial Mortgage saying,  
3 well, yes, we rejected your servicing agreements, but we'd like  
4 the money, anyway, to which you get the inevitable  
5 counterclaims, and there's a new servicing agent.

6 And by the way, the new servicing agent isn't coming in at  
7 one percent or up to three percent, and we hope to be able to  
8 recover advances.

9 The servicing agent is going to come in at market rates to  
10 service distressed loans. The loans that are left are not the  
11 happy that-we'll-be-writing-you-a-check-when-the-loan-matures  
12 loans.

13 They are the Tracy Suttles go hire Vinson & Elkins in  
14 Houston and the problems at Amesbury/Hatters Point and other  
15 problems in Massachusetts.

16 They are the ugly, coyote ugly, loans that the lenders are  
17 going to have to pay significantly more to have serviced, and  
18 all of those will be damages asserted against  
19 Commercial Mortgage.

20 So in our view, Chapter 11 created value by Mesirow  
21 identifying these fees and collecting them, including the fees  
22 Ms. Jarvis identified.

23 Chapter 7 conversion costs you substantially that value,  
24 and, consequently, there is either no continuing loss because  
25 these values are here and being collected or the notion of

1 rehabilitation is here we maximize the collections through the  
2 Chapter 7 or the liquidation.

3 The last point I made is a declaration that we filed  
4 for Mr. Russell which has not been touched upon by the  
5 parties.

6 Bob Russell, Robert Russell, is a member of our committee.  
7 You'll also remember him as wearing a borrower hat in  
8 connection with the loan that Fertitta funded the completion  
9 on. He has other loans where he is a borrower dealing with  
10 Commercial Mortgage.

11 And his declaration essentially says if you send out the  
12 message about a possible conversion you have dramatically  
13 adversely affected the borrowers because they're not sure now  
14 who to deal with or who they're going to be negotiating with.

15 But if you convert, if you shut down the business, get rid  
16 of the employees, bring in new trustees who have to be  
17 disinterested -- how will you find them in Nevada -- and new  
18 sets of professionals who have to be disinterested -- how will  
19 you find them in Nevada or Arizona or California -- you are  
20 going to have to restart the process with borrowers.

21 And so every borrower that's now working with Mr. Allison  
22 on a sale or a refinance or releasing of collateral or whatever  
23 before the end of the year, in the next couple of months, all  
24 of that process stops while you bring someone else in up to  
25 speed.



1           Forget the difficulty of collecting difficult loans. If  
2           you have a difficult loan, and Mr. Allison is saying we may sue  
3           you, we're getting ready to hire lawyers, and you see the  
4           Chapter 7 Trustee is coming in, you'll say, friend, I'll talk  
5           to the trustee if and when he or she can figure out who I am  
6           and how much I owe, and all of that dramatically decreases the  
7           recovery for creditors in these Chapter 11 cases.

8           Therefore, we believe that as a factual predicate there is  
9           neither a substantial or continuing loss nor is there an  
10          absence of rehabilitation.

11           THE COURT: Okay. Thank you.

12           MR. GARMAN: Your Honor, Greg Garman for the  
13          Direct Lenders Committee. Your Honor, you've heard  
14          enough.

15           Congress has taken away Mr. Landis' discretion in many  
16          ways, but the Direct Lenders Committee joins in the compelling  
17          arguments of the debtor, the First Trust Deed Fund, and the  
18          Unsecured Creditors.

19           THE COURT: Okay. Now, you're involved in the  
20          21st Century's case, right?

21           MR. GARMAN: My office is, your Honor.

22           THE COURT: You're not personally.

23           MR. GARMAN: I am not.

24           THE COURT: Okay.

25           MS. LORADITCH: Your Honor, Anne Loraditch on behalf

1 of the Diversified Trust Deed Fund Committee. The  
2 Diversified Fund Committee would echo the compelling arguments  
3 of counsel here today in opposition to the motion to convert.

4 THE COURT: All right. Thank you. All right.  
5 Reply.

6 (Colloquy not on the record.)

7 MR. LANDIS: Thank you, Judge. A lot of things got  
8 said, and a lot of things didn't. Some things that you didn't  
9 hear, that USA Commercial Mortgage can originate the very first  
10 loan postpetition. It can't. Nobody said that it could. It's  
11 not going to be an ongoing business.

12 And, in fact, Mr. Allison has told you in connection with  
13 his affidavits that the nature of the business of  
14 USA Commercial Mortgage is, in fact, to originate and service  
15 loans, not going to do that. It's going to service them for a  
16 while, and then they're going to be sold.

17 What's going to happen is that they're going to collect a  
18 finite set of loans. They're going to reduce the outstanding  
19 loan pool down to the coyote uglies.

20 The good assets are going to be gone out of the estate,  
21 and what you're going to be left with is a nonoperating  
22 litigation estate. That's a problem in the context of  
23 11, USC, Section 1112(b).

24 (Colloquy not on the record.)

25 MR. LANDIS: Second, that USA Commercial Mortgage is

1 operating at a profit postpetition. Nobody said that. They  
2 can't. It's not, and so they don't.

3 Really, what it boils down to, though, is that all the  
4 fees that they're supposedly going to be collecting are the  
5 same fees they've been collecting all the time postpetition.

6 And what has that yielded for the benefit of debtors -- or  
7 excuse me -- of creditors? Bupkis. As a matter of fact,  
8 negative to the tune of over \$1,000,000.

9 Third, the Legacy Estate Group case, I've read it. It's  
10 distinguishable on its facts. A couple of things the Court  
11 needs to know about that.

12 First, the creditor in that case filed the motion to  
13 convert, and it was heard after the sale happened. That's why  
14 we're here now. We wanted to avoid exactly that problem.

15 Second, the unusual circumstances that warranted a denial  
16 of conversion wasn't the contents of the monthly-operating  
17 reports.

18 What the Court seized on is this. "The parties have  
19 turned a case which could have resulted in major losses to  
20 local growers" -- this is winery country, and these are  
21 vineyards -- "to local growers and complete disaster to  
22 unsecured creditors into a case where growers have been paid,  
23 three major wineries have been preserved as going concerns  
24 along with the jobs that they generate, and the creditors  
25 committee anticipates a 100-percent dividend to unsecured

1 creditors under a plan which could be confirmed within a month  
2 or two." Nobody has told you that there's going to be a  
3 100-percent dividend to creditors in this case.

4 Fees will diminish. If they diminish, and they're already  
5 losing money, what's going to happen to the estate? Diminution  
6 in value. It's a fixed loan pool.

7 This is not an objection to confirmation of a plan. We  
8 are not objecting to liquidation plans, in general. We are  
9 objecting to -- we are asking the Court to determine that, in  
10 fact, in this particular set of circumstances under the facts  
11 of these five cases that conversion is warranted.

12 With respect to the question about liquidation via  
13 Chapter 7, the trustees can market and sell assets. They do it  
14 all the time. They can service the remaining loans, and they  
15 can make arrangements to do it if it makes sense.

16 If it doesn't, it limits the cost, and the upside cost is  
17 limited to the cap at least as far as the trustee's fees are  
18 concerned.

19 Joint administration or substantive consolidation of  
20 Chapter 7 cases could eliminate some of the concerns that have  
21 been expressed.

22 Judge, you've heard now I think what you need to hear in  
23 order to address and resolve this motion. This is a court of  
24 equity. That much is true.

25 But in the Ninth Circuit, equity follows the law. That's

1 what we're asking the Court to do now. The law requires that  
2 these cases be converted to Chapter 7. We're asking you now to  
3 enter an order accordingly.

4 Thank you, Judge.

5 THE COURT: Okay.

6 (Thereupon, the portion requested to be transcribed  
7 was concluded at 11:44:25.)

8 (Recess at 12:13:44 p.m.)

9 (Court reconvened at 12:36:23 p.m.)

10 THE COURT: Be seated.

11 (Colloquy not on the record.)

12 THE COURT: Okay. I guess the next motion we have,  
13 then, is --

14 (Colloquy not on the record.)

15 THE COURT: -- the loan modification.

16 (Colloquy not on the record.)

17 MS. JARVIS: Hopefully, your Honor, in our reply  
18 brief, we did clarify a lot of issues that were brought up, you  
19 know, in the objections, and I think that we should have most  
20 of those resolved, and let me just kind of, you know, summarize  
21 what the issues are.

22 The Palm Harbor One loan, what we're asking for is  
23 permission to reduce the release price by 20 percent, and this  
24 is based on, you know, Mr. Allison's review of the situation  
25 (indiscernible) the situation in order to get this done meaning

1 getting the units sold that what is now market price we believe  
2 and also in order to get this paid by the maturity date.

3 There are certain requirements in the loan documents with  
4 respect to making sure the ratio of loan to value is a certain  
5 percent. Those requirements will be complied with.

6 We also have sent out the three-day notice under the  
7 loan-servicing agreements to all the direct lenders. No one  
8 has objected.

9 And we did answer questions on some of those and, you  
10 know, made sure -- for instance, one of the issues raised was  
11 we didn't put in appraisal information in our motion.

12 Well, we did send out information to the lenders.  
13 Obviously, this is as we've previously said sensitive  
14 information, appraisal information, for both the borrowers and  
15 the lenders.

16 So the information that was given to the lenders both in  
17 responding to questions as well as in the letter was broader  
18 than what's given to the Court, so that was done, and no one  
19 has objected to that.

20 THE COURT: Let me ask first if there's now any  
21 objections to the Palm Harbor modification.

22 MR. GARMAN: There are, your Honor.

23 THE COURT: All right.

24 MR. GARMAN: We've narrowed it --

25 THE COURT: Well, let's do them one by one, then.

1 MR. GARMAN: Yeah.

2 MS. JARVIS: We will also get as we said written  
3 approval of any subordinated debt. We have made it a practice  
4 as soon as we signed up the offer letter with Silver Point to  
5 run these issues by Silver Point.

6 THE COURT: But I'm --

7 MS. JARVIS: And --

8 THE COURT: I just want to talk about Palm Harbor  
9 first.

10 MS. JARVIS: Yeah. This is Palm Harbor --

11 THE COURT: Oh.

12 MS. JARVIS: -- as well --

13 THE COURT: Oh, okay. Okay.

14 MS. JARVIS: -- because it's a modification. And in  
15 order not to run afoul --

16 THE COURT: Okay.

17 MS. JARVIS: -- of some of the covenants, we do run  
18 this by Silver Point and do get confirmation from them that  
19 there is not an issue before we go ahead.

20 We do think, you know, your Honor, the three-day rule we  
21 think clearly applies. We are abiding by the terms of the  
22 loan-servicing agreement.

23 That is the way this has been done in the past, the way it  
24 has been agreed to, to be done under the loan-servicing  
25 agreement, and the way that we did get permission to do this

1 from the lenders in this instance as well.

2 THE COURT: Okay. All right. Mr. Garman.

3 MR. GARMAN: Your Honor, we've gotten a lot closer.  
4 I just want to make sure that we're all on the record with what  
5 we've done.

6 Your Honor, I have one primary job in this case, and  
7 that's to protect the direct lenders and the loan-service  
8 agreements.

9 And I get really nervous when we bring forward motions  
10 under 105 and 363 arguing that in the ordinary course of the  
11 debtor's business judgment they can use property of the estate  
12 both in the ordinary course or outside of the ordinary course.

13 And as it comes to --

14 THE COURT: Well, I --

15 MR. GARMAN: It comes --

16 THE COURT: I can't believe --

17 MR. GARMAN: As it comes --

18 THE COURT: -- that you're saying this is property of  
19 the estate.

20 MR. GARMAN: And that --

21 THE COURT: Your direct lenders will have heart  
22 attacks if you're saying that this is property --

23 MR. GARMAN: That's clearly --

24 THE COURT: -- of the estate.

25 MR. GARMAN: -- my opposition. And if you read the



1 motion, it says that the authority sought by the motion is  
2 under 105 and 363.

3 And that, clearly, I can't accept an order that says under  
4 363 the debtor is authorized to do certain things outside of  
5 the ordinary course as it constitutes property of the estate.  
6 That is my primary objection.

7 THE COURT: Okay. But there's language that would  
8 satisfy that, wouldn't it?

9 MR. GARMAN: I think so.

10 THE COURT: Okay.

11 MR. GARMAN: And I just want to make sure we're all  
12 on the same page.

13 When it comes to Palm Harbor, when the motion was filed, I  
14 did not have an understanding that the terms of the  
15 loan-service agreement had been complied with, and that  
16 individual letters had been sent to direct lenders indicating  
17 what was happening.

18 Consistent with our past pleadings, the Direct Lenders  
19 Committee is uncomfortable that the terms of the loan-service  
20 agreement have been complied with simply because notices of  
21 hearings have gone out.

22 It appears as if the debtor has sent -- and I think  
23 they'll acknowledge this -- to individual direct lenders  
24 explaining the business judgment as to why it is that the  
25 debtor supports this.

1 But I want to be very clear that any order entered as it  
2 relates to Palm Harbor should not reflect that in the exercise  
3 of the debtor's business judgment the following things have  
4 happened.

5 I think that that business judgment belongs to the direct  
6 lenders. And if the direct lenders have not objected, and the  
7 terms of the loan-service agreement have been complied with,  
8 then it is fully appropriate for USA in their capacity as loan  
9 servicer to take certain steps.

10 It's just the language of the order that I'm very  
11 concerned about and the language of the request as it comes to  
12 Palm Harbor. We'll deal with the next two, but I just want to  
13 be very clear that those are my concerns with Palm Harbor.

14 But if the terms of the loan-service agreement have been  
15 complied with and are not being modified in any way with  
16 respect to this request, I'm not here to argue that this is not  
17 an appropriate action to take.

18 THE COURT: Okay.

19 MS. JARVIS: And, your Honor, if I could just  
20 explain? When we talk about property of the estate, exercise  
21 of business judgment, we're talking about the contracts which  
22 are property of the estate, and that's really, you know, the  
23 premise of what we're asking for.

24 We have lived by, you know, the terms of the contract.

25 THE COURT: Um-h'm.

1 MS. JARVIS: Like I said, we, you know, carefully  
2 make sure that when a three-day notice is required we send out  
3 a three-day notice which was done in this case without  
4 objection by the direct lenders.

5 THE COURT: Okay. So if we get in a fight, if we  
6 spend lots of hours on an order, then I'm really going to be  
7 disappointed in everybody.

8 It seems to me the ordinary course of business is  
9 servicing contracts. And in compliance with the loan  
10 agreements, it's done, right? Does that solve --

11 MR. GARMAN: I believe it is, your Honor. I --

12 THE COURT: Okay.

13 MR. GARMAN: I don't know that we need an order for  
14 that.

15 MS. JARVIS: And, you know, you, well -- and, you  
16 know, your Honor, too, we would like an order. We need it  
17 submitted immediately because these are kind of things that  
18 back up, and we need --

19 THE COURT: Well, I know.

20 MS. JARVIS: -- them done, and --

21 THE COURT: But that all depends upon you getting  
22 them submitted.

23 MS. JARVIS: Correct. And we've asked --

24 THE COURT: And like I said, I'm tired of like told  
25 I've got to do them right away, and they don't get submitted

1 for a week.

2 MS. JARVIS: Understood.

3 THE COURT: I still don't have the order on the --

4 MS. JARVIS: It's been uploaded. The bid-procedures  
5 order is signed off, and it has been uploaded while we've been  
6 in hearings this morning.

7 THE COURT: Okay. Now, the Marlton loan.

8 MS. JARVIS: The Marlton, let me go to the  
9 Marlton Square 2nd loan. This is a situation where there is  
10 already a subordination agreement in place and meaning that the  
11 lenders agreed to it in their original loan documents.

12 It's just a confirmation, and Mr. Garman asked, well, why  
13 do you need orders. Part of it is because of the uncertainty  
14 of the situation.

15 A lot of times, we simply can't get borrowers to pay off  
16 loans unless we have, you know, clear permission from the Court  
17 to do this.

18 And this is really kind of one of those situations where  
19 they want assurance that we can actually, you know, give them  
20 the agreement to subordinate even though it's been previously  
21 agreed to in the documents, so the motion was filed.

22 We did not give a three-day notice because this is it was  
23 already agreed to in the agreement, so we don't want to confuse  
24 them and think they're agreeing to something new.

25 We did make sure that this motion was served on every one

1 of the direct lenders in this loan, and there were not any  
2 objections to this.

3 We also have made it a requirement in order to confirm  
4 that the subordination agreement is in place. We will require  
5 the borrower to bring current the past-due interest, so that is  
6 being sought. And like I said, notice has been given of this  
7 motion to all the direct lenders without objection.

8 THE COURT: Okay. All right. Is there still  
9 opposition to this one, then?

10 MR. GARMAN: Well --

11 (Colloquy not on the record.)

12 MR. GARMAN: Your Honor, I just want to be clear  
13 again. We have concerns not again through the exercise of the  
14 business judgment, but making sure that the debtor is complying  
15 with the terms of the loan-service agreement.

16 There's a provision that provides for the direct lenders  
17 have consented to a subordination under certain circumstances.  
18 Those circumstances are really not before the Court.

19 We don't know what the terms of the new loan are. We  
20 didn't know when the motion was filed whether subordinate  
21 positions had consented to this such that the second wouldn't  
22 be pushed down to fourth or a fifth and their requests for  
23 forbearances on notes that have already matured.

24 Again, I'm comfortable that if the contracts authorize the  
25 debtor to take these actions they authorize the debtor to take

1 these actions.

2 I'm uncomfortable if we're getting orders that allow them  
3 to, arguably, violate the terms of the loan-service agreement  
4 simply because we don't have enough information.

5 I again don't think that an order -- if truly this is an  
6 ordinary-course transaction for the debtor, I don't think --

7 THE COURT: Well --

8 MR. GARMAN: -- that --

9 THE COURT: -- what would you rather have, somebody  
10 not pay because they claim you don't have an order?

11 MR. GARMAN: No, your Honor. What I want to make  
12 sure is that if they breach the terms of the loan-service  
13 agreements on a postpetition basis we're not getting a comfort  
14 order that says direct lenders don't have a claim for a breach  
15 if that is what the circumstances are. That's my concern. I  
16 don't want to give them --

17 THE COURT: Have you ever suggested --

18 MR. GARMAN: -- an umbrella to breach.

19 THE COURT: -- any language in an order to them?

20 MR. GARMAN: Well, your Honor, I don't think an order  
21 is necessary, and I didn't know. I didn't until today. There  
22 were issues that weren't dealt with in the motion, your Honor,  
23 and I think that we've resolved them by way of the reply once  
24 again.

25 But if there is an order of this Court that's necessary to

1 say that the debtor is authorized to perform under the terms of  
2 the loan-service agreement, no one would have any concern about  
3 that.

4 But if there is an order that's necessary to say that  
5 direct lenders have consented to this or that direct lenders  
6 have previously consented to that, I don't know that it would  
7 be appropriate nor have I heard that that specific language was  
8 requested by any potential borrower. We haven't even heard the  
9 name of a borrower.

10 THE COURT: Okay. Have any direct lenders on this  
11 loan contacted you?

12 MR. GARMAN: Well, they weren't noticed, your Honor.

13 MS. JARVIS: No. They were, the notice, and we --

14 THE COURT: So they were.

15 MS. JARVIS: We made sure that the motion and the  
16 notice went out to all of the direct lenders on each of the  
17 loans affected.

18 MR. GARMAN: And, your Honor, if the notices go out  
19 in compliance with the loan-service agreements, it's the  
20 direct-lenders' business judgment that needs to take precedent.  
21 If they've complied with it, then it should go forward.

22 THE COURT: Okay. So does that solve your problem?  
23 I mean --

24 MS. JARVIS: And this is not a new subordination.  
25 We're not asking --

1 THE COURT: Okay.

2 MS. JARVIS: -- can you now give us permission. This  
3 is just affecting --

4 THE COURT: So it is on order --

5 MS. JARVIS: -- what's already in there.

6 THE COURT: -- that merely says you're authorized to  
7 enter into the subordination --

8 MS. JARVIS: Well, we offered --

9 THE COURT: -- in accordance with the terms of the  
10 agreements?

11 MS. JARVIS: Right.

12 THE COURT: That's sufficient?

13 MS. JARVIS: The term of the existing agreements,  
14 right, because these lenders already agreed to subordination.

15 THE COURT: Okay.

16 MS. JARVIS: So --

17 THE COURT: So as long as they say in accordance with  
18 the existing agreements --

19 MS. JARVIS: Yes.

20 THE COURT: -- you're all right.

21 MS. JARVIS: Yes.

22 THE COURT: Are you all right there --

23 MR. GARMAN: I'm comfortable --

24 THE COURT: -- Mr. --

25 MR. GARMAN: -- with that --



1 MS. JARVIS: Yes.

2 MR. GARMAN: -- your Honor.

3 THE COURT: Okay. Okay. And the next one.

4 MS. JARVIS: The Marlton Square 1st loan, in this  
5 case, it matured on September 19th. We're asking for  
6 permission to forbear on this until November 19th.

7 Again, forbearance is something that under the  
8 loan-servicing agreements that the USA Commercial Mortgage is  
9 allowed to do without giving out a three-day notice, so we did  
10 not give out that three-day notice.

11 We did, however, make sure that all of the lenders on  
12 this loan were noticed with the motion and the notice of  
13 hearing.

14 This is a situation where the forbearance was agreed to --  
15 and, again, we're talking now for only a couple more weeks --  
16 in order to allow them to refinance this.

17 Mr. Allison has had numerous discussions with this lender,  
18 believes that it can be refinanced, and that this makes the  
19 most sense.

20 This is not an extension of maturity because we are not  
21 showing it as anything other than a matured loan on the books.  
22 We're treating it as a matured loan. It is simply a temporary  
23 forbearance, and, again, none of the direct lenders have  
24 objected to this.

25 THE COURT: Okay. Is there any opposition to this

1 one still?

2 MR. GARMAN: No, your Honor. I think we've resolved  
3 it other than under the loan-service agreements they're  
4 authorized to enter into forbearances, but they're specifically  
5 not authorized to enter into loan extensions.

6 That's a fine line, and I want to make sure that we're not  
7 determining what that line's going to be --

8 THE COURT: Okay.

9 MR. GARMAN: -- by way of this proceeding.

10 MS. JARVIS: Understood, your Honor.

11 THE COURT: All right. And Mr. Hartman, does he  
12 still have an objection?

13 MR. HARTMAN: Yes, your Honor. My objection was very  
14 small and conditional. I've only been in the case for about a  
15 week, so I'm a little behind the curve.

16 I just wanted to understand in the conditional opposition  
17 what happens to the loan proceeds once they're confirmed, and  
18 what I got instead of an answer was, well, it's already been  
19 dealt with in some other order. Go figure it out. Can --

20 MS. JARVIS: The --

21 MR. HARTMAN: You know, that's what I'm asking for --

22 MS. JARVIS: The --

23 MR. HARTMAN: -- the answer --

24 MS. JARVIS: Yeah. Then --

25 MR. HARTMAN: -- to that question.

1 MS. JARVIS: Then maybe I can respond more clearly.  
2 We do have in place a motion or an order to distribute funds,  
3 and all funds that are collected kind of funnel through this  
4 motion or this order to distribute funds, so they will be  
5 distributed to the direct lenders.

6 There are certain holdbacks that are allowed under the  
7 orders. Those will be implemented. But other than that, the  
8 funds will be paid out on a monthly basis to the direct  
9 lenders.

10 MR. HARTMAN: Okay.

11 THE COURT: On a monthly or isn't it just -- when you  
12 get it, don't you pay it all at once other than the holdbacks?

13 MS. JARVIS: I think we actually pay it on a monthly.

14 (Colloquy not on the record.)

15 MS. JARVIS: Right. Yeah. The distribution's made  
16 monthly. That's in accordance with the distribution motion  
17 where we take all the collections that have happened in the  
18 past month.

19 We send it out to the financial advisers of various  
20 committees what we're going to distribute to the lenders. If  
21 they have any problem, they let us know. And if not or if we  
22 resolve them, then everything's distributed.

23 THE COURT: Well, I guess -- oh, okay. But the point  
24 is it's not like you're going to get paid -- if his share was  
25 300,000, it's not like he's going to get 300,000 divided by a

1 year each month. It's going to be --

2 MS. JARVIS: No.

3 THE COURT: -- 300,000 --

4 MS. JARVIS: The whole thing.

5 THE COURT: -- at the end of the next month after  
6 the --

7 MS. JARVIS: That's right.

8 THE COURT: Okay.

9 MS. JARVIS: Yeah. When a loan is collected in full,  
10 that whole part goes into being distributed --

11 THE COURT: Right.

12 MS. JARVIS: -- in the next month.

13 THE COURT: Right.

14 MS. JARVIS: That is correct, your Honor.

15 THE COURT: Okay.

16 MR. HARTMAN: So with respect to the holdbacks as I  
17 understand them, there is a procedural mechanism whereby they  
18 have to provide that information to the lenders, so that there  
19 can be an opportunity to agree or disagree.

20 THE COURT: I forget how we did that. Part of it's  
21 the holdbacks because --

22 MS. JARVIS: There is --

23 THE COURT: -- of the netting.

24 MS. JARVIS: I think the hold -- yeah. There is both  
25 the netting holdbacks where if there is a lender in several

1 loans there's netting across loans.

2 And then the second is just a three-percent holdback  
3 pending a determination as to whether this is actually a  
4 three-percent loan-servicing agreement --

5 THE COURT: Oh, one percent. That's right.

6 MS. JARVIS: -- or that there are some other possible  
7 charges that could be made.

8 THE COURT: You know what you should do --

9 MR. HARTMAN: So is --

10 THE COURT: -- is --

11 MR. HARTMAN: May I --

12 THE COURT: Sure.

13 MR. HARTMAN: I'm sorry.

14 THE COURT: Um-h'm.

15 MR. HARTMAN: Is the three percent part of the  
16 servicing agreement or is that a new percentage that the --

17 THE COURT: Part of the servicing.

18 MR. HARTMAN: Okay.

19 THE COURT: Some cases, the servicing agreement  
20 purported to say three, but they were only doing one, yeah, and  
21 that's why I said you should hold back the three because  
22 notwithstanding the fact that you were only getting one they  
23 were entitled to the three, and that could be determined later.

24 MS. JARVIS: And some of that is why. Some of that  
25 is temporary. The one percent is immediately collectible.

1           The two percent is pending further determination by the  
2           Court as to which ones are subject to the three percent and  
3           which ones may be subject to other costs that can be held back  
4           under the loan-servicing agreements.

5           THE COURT: You know what I should do is probably get  
6           that order and have BNC put that as a separate or else have a  
7           separate link.

8           MS. JARVIS: Okay. We'll do that.

9           MR. HARTMAN: All right. Thank you, your Honor.

10          THE COURT: Um-h'm.

11          (Colloquy not on the record.)

12          THE COURT: And any other objections to that one,  
13          then?

14          Canepa's satisfied now or not?

15          MS. DAVIS: Your Honor, I had an objection to the  
16          more general language which has been clarified by the reply and  
17          the representations made on the record.

18          I share the same concern that Mr. Garman has that when  
19          you're talking about a short-term forbearance versus a loan  
20          extension it is a fine line.

21          But with the clarification that they will give the notices  
22          that are required by the loan-servicing agreements, and that  
23          they're just looking for, really, comfort orders when they need  
24          them, my concerns are satisfied.

25          THE COURT: Okay. Okay. And the forbearances, I

1 guess there's an agreement that 90 days is permissible?

2 MS. JARVIS: Well, I think we've asked for 90 days,  
3 and I'm not sure whether the First Trust Deed -- they've  
4 asked --

5 THE COURT: 60.

6 MS. JARVIS: -- for 60.

7 THE COURT: Okay.

8 MS. JARVIS: Yeah. So --

9 MS. KARASIK: Your Honor, 90 days is fine. We just  
10 threw 60 days out. We just didn't want an unlimited --

11 THE COURT: Yes.

12 MS. JARVIS: And --

13 THE COURT: Okay.

14 MS. KARASIK: -- forbearance period.

15 MS. JARVIS: Yeah.

16 THE COURT: Mr. Garman.

17 (Colloquy not on the record.)

18 MR. GARMAN: Your Honor, I actually strenuously  
19 object to this one. They're asking for an order that says  
20 notwithstanding what the contract says if they enter into a  
21 forbearance for up to 90 days regardless of what the underlying  
22 circumstances are that's not a breach of the loan-servicing  
23 agreement, and that's inappropriate.

24 Some of these loans have been in default for potentially a  
25 year. And to simply give them comfort to say they can extend

1 it for another 90 days and wouldn't be subject to an  
2 affirmative claim by a direct lender, I think it is just  
3 entirely inappropriate under the circumstances.

4 They have the right to enter into forbearances under the  
5 terms of the contract. And if they wish to exercise that  
6 right, they're free to do so, but don't give them an umbrella.

7 THE COURT: Okay.

8 MS. JARVIS: Your Honor, the contract does give the  
9 right, you know, for the loan servicer to enter into  
10 forbearance without getting permission from the lenders.

11 As we've gone through these cases, you know, we've been  
12 very careful in making sure that, you know, we've proceeded by,  
13 you know, notice even on issues that we think, you know, we  
14 could do from an ordinary-course standpoint both because we  
15 wanted to make sure that people had notice, have what we were  
16 doing, so that if there were any problems with that they could  
17 be dealt with, but, also, because, again, it's difficult for us  
18 to negotiate with these borrowers and get things done with the  
19 uncertainties of this case. And so in many cases, we do need  
20 orders simply to get agreements done.

21 I think the practice has been in this case at the very  
22 beginning we asked for kind of more ordinary-course  
23 approval.

24 And I think, you know, the Court being sensitive to, you  
25 know, the issues in this case and the concerns of the direct



1 lenders has really -- basically, I took the message from the  
2 Court in our initial motion on this that we needed to come to  
3 the Court and get permission to do things in a more open  
4 fashion. That that was also the preference of the Court.

5 And this is in that spirit where we're recognizing we have  
6 the right under the loan-servicing agreements to enter into  
7 forbearance agreements.

8 We're simply saying we don't want to come back every time  
9 to the Court. We'd like to just get permission to go ahead as  
10 long as they're not more than 90 days to do this without having  
11 to seek --

12 THE COURT: Okay. The --

13 MS. JARVIS: -- further Court permission.

14 THE COURT: Why you guys keep bringing motions or  
15 like the servicing agreements, and nobody ever files one, I  
16 don't know.

17 Nobody attached a servicing agreement to any of their  
18 pleadings. I got every other pleading in the world. I got  
19 subordination agreements, and I've got construction-loan  
20 agreements.

21 MS. DAVIS: Your Honor, I referred back to the ones  
22 that I had filed in conjunction with my relief-from-stay motion  
23 by docket entry. I don't know whether your Honor has that --

24 THE COURT: I --

25 MS. DAVIS: -- immediately --

1 THE COURT: That was --

2 MS. DAVIS: -- in front of you.

3 THE COURT: -- the only one --

4 MS. JARVIS: We --

5 THE COURT: -- I've ever seen --

6 MS. JARVIS: Yeah.

7 THE COURT: -- that I've been able --

8 MS. JARVIS: We'll --

9 THE COURT: I dug that out --

10 MS. JARVIS: Yeah.

11 THE COURT: -- for the last hearing.

12 MS. JARVIS: We will make sure that when we reference  
13 loan-servicing agreements they're always attached.

14 THE COURT: Because, again, I don't know.

15 MS. JARVIS: We'll --

16 THE COURT: You know, there were obviously  
17 differences because when I refer to the one they were obviously  
18 different than what you were doing. Well, I'll take the matter  
19 under submission. I don't have a servicing agreement.

20 MS. JARVIS: Okay. Your Honor, we'll go ahead and  
21 file one. If we could do a redacted one because we -- or I  
22 guess we could use one that's already been filed by a party --

23 THE COURT: Okay.

24 MS. JARVIS: -- if the Court would prefer.

25 THE COURT: And in the meantime, if you've got --

1 whatever authority you have under the contract, you have under  
2 the contract.

3 But if you're asking for a ruling, then I can't do it  
4 because nobody's given me the contract. Nobody has even talked  
5 about the contract, so --

6 MS. JARVIS: So just so I understand what your Honor  
7 is saying, then, is we either have the option to go ahead and  
8 do a forbearance if we feel like it's appropriate or you would  
9 ask for a supplemental submission on that, so that the Court  
10 can rule on that.

11 THE COURT: Right.

12 MS. JARVIS: Okay. We will do one of those of the  
13 others. I think because of the issue we have with respect to  
14 negotiating with these borrowers it will probably be the  
15 latter, filing the motion just because they need to understand  
16 that we have the ability to do that in order for us to  
17 negotiate with them to get these loans repaid.

18 THE COURT: Okay. And if Mr. Garman's loans aren't  
19 collected, that's his client's problems.

20 MS. KARASIK: Your Honor, just we're a little bit  
21 concerned about the intersection between this motion and the  
22 Silver Point deal, and I'm just curious.

23 I know on the -- I mean, you stated on the record that  
24 they don't have a problem with us, and, you know, obviously --

25 MS. JARVIS: If --

1 MS. KARASIK: -- I trust you, but I'd like something.  
2 I don't know if I should sign off on the order.

3 I believe there's some provision, potentially, in the APA,  
4 and I have been sort distanced from that. We've tried to split  
5 that apart, so we don't double, you know, bill in this case --

6 MS. JARVIS: I --

7 MS. KARASIK: -- (indiscernible).

8 MS. JARVIS: I think the easiest thing would be in  
9 any order simply put that we would run this by Silver Point in  
10 accordance with the APA and --

11 MS. KARASIK: And then we'd --

12 MS. JARVIS: -- would not proceed --

13 MS. KARASIK: -- sign off on it?

14 THE COURT: Why don't you put --

15 MS. JARVIS: Yeah.

16 THE COURT: -- in your certification --

17 MS. JARVIS: Okay.

18 THE COURT: -- that you've contacted I think we  
19 decided it was qualified buyers --

20 MS. JARVIS: Yeah.

21 THE COURT: -- who had deposited --

22 MS. JARVIS: It's --

23 THE COURT: -- their funds.

24 MS. JARVIS: Right. And signed an asset purchase  
25 agreement. Right.

1 THE COURT: Right.

2 MS. JARVIS: Right.

3 THE COURT: So you could just do a 9021 certificate  
4 that indicates that you've contacted and then save for your  
5 files your E-mail to them --

6 MS. JARVIS: Okay.

7 THE COURT: -- et cetera.

8 MS. JARVIS: Okay. We will do that. That's a good  
9 idea --

10 MS. KARASIK: Would you --

11 MS. JARVIS: -- your Honor.

12 MS. KARASIK: -- just make sure that we're copied on  
13 that and everything?

14 MS. JARVIS: Okay.

15 MS. KARASIK: Great.

16 Thank you.

17 THE COURT: Okay. So I guess we'll continue this  
18 part 3 of this motion until the November 13th date.

19 MS. JARVIS: Okay. The other clarification we'd ask  
20 -- and, again, this comes from borrowers -- but, you know, just  
21 the uncertainties to get them to pay.

22 We have an order already from the Court that when a loan's  
23 paid off in full, you know, we can give a release and collect  
24 that loan, but it was dealing with sales, originally, with  
25 sales of property.

1           We would just like a clarification that we can also deal  
2           with it with respect to refinancings as well because that has  
3           come up, particularly --

4           THE COURT: Don't you have --

5           MS. JARVIS: -- in connection --

6           THE COURT: -- any authority --

7           MS. JARVIS: -- with the Marlton Square.

8           THE COURT: -- under your agreement to give  
9           reconveyances?

10          MS. JARVIS: We do. But, again, because of the  
11          uncertainties that we -- we have gone in and gotten orders from  
12          the Court to allow us to give us permission to go ahead and  
13          give a full release upon payment in full.

14          Some of the borrowers balk because they're just concerned  
15          about it, so we --

16          THE COURT: Okay.

17          MS. JARVIS: -- just want a clarification that it  
18          extends to refinancing as well.

19          So, in other words, any way that it's repaid through a  
20          sale or refinancing, we clearly can give releases and collect  
21          those loans in full.

22          THE COURT: All right. Is there any objection to  
23          that aspect of it?

24          MR. GARMAN: No. Your Honor, if it would make it  
25          easier, instead of taking these piecemeal, I would consent to

1 entry of an order that they are authorized to take all actions  
2 under the loan-service agreement.

3 THE COURT: Okay. Does that satisfy your needs?

4 MS. JARVIS: That would satisfy our needs,  
5 your Honor.

6 THE COURT: Okay.

7 MS. JARVIS: Yes.

8 THE COURT: So why don't you do that instead --

9 MS. JARVIS: Okay.

10 THE COURT: -- then.

11 MS. JARVIS: We will do that.

12 THE COURT: All right. So the next thing we have --

13 MS. JARVIS: If I could just raise one --

14 THE COURT: Sure.

15 MS. JARVIS: -- one issue?

16 THE COURT: Um-h'm.

17 MS. JARVIS: With respect to the three loans, we did  
18 ask for a Rule 6004(g) provision in the order that would be  
19 okay, so they could be effective immediately, and we did. You  
20 know, like I said, this was noticed out --

21 THE COURT: All right.

22 MS. JARVIS: -- to everyone.

23 THE COURT: All right. So that's granted.

24 MS. JARVIS: Okay.

25 THE COURT: Okay. Next, we have the cash, the cash

1 motion.

2 MR. SCHWARTZER: Lenard Schwartzer appearing for the  
3 debtors and debtors in possession, your Honor. This is no  
4 longer a contested matter, your Honor.

5 We have filed a motion to extend the time period for the  
6 debtor to be allowed to use the cash that's coming into  
7 USA Commercial to pay the normal expenses pursuant to the  
8 fourth revised budget filed on October 20th.

9 This motion seeks that the continuing use of cash go  
10 through the week ending January 31st, 2007, which, hopefully,  
11 will be through the week of the completion of the sale of the  
12 servicing business.

13 We did receive a reply, an opposition, from the  
14 First Trust Deed Fund Committee. And after discussions with  
15 them, there is an agreement that going forward the fee being  
16 paid by the First Trust Deed Fund to USA Realty Advisors on a  
17 monthly basis, a management fee, which is different than the  
18 collection fee that's collected by USA Commercial, the  
19 management fee, will be held in USA Realty Advisors and not  
20 spent because there is a potential claim by the First Trust  
21 Deed Fund to recoup that fee.

22 Now, that will be going forward from today because in the  
23 past and as reported in the last monthly-operating report these  
24 funds have been taken. This management fee has been taken from  
25 the First Trust Deed Fund and used by USA Commercial Mortgage.



1 But going forward I guess beginning with the fee for the  
2 month of November, it will be held in USA Capital Realty and  
3 not used for expenses at this time. Possibly, this issue will  
4 be handled by the plan of reorganization and eliminated that  
5 way. That's my understanding.

6 THE COURT: Okay.

7 MR. SCHWARTZER: Other than the brief filed by the  
8 First Trust Deed Fund Committee, there has been no other  
9 objections or responses to the motion.

10 THE COURT: Okay.

11 MS. KARASIK: Your Honor, we did object based on the  
12 management fee. It was our understanding that we had an  
13 agreement where it was going to be held in escrow, and,  
14 apparently, there was some confusion there. So going forward,  
15 they will hold it separately. It's okay that it's in  
16 USA Realty.

17 I'm told by Ms. Carlyon who reviews the operating reports  
18 in this case that it was not paid over in the last set of  
19 operating report.

20 So we would like to have this start from my guess it would  
21 be September going forward, rather than from the October going  
22 forward.

23 Ms. Carlyon, do you want to look at this?

24 MS. CARLYON: The monthly-operating reports filed to  
25 date correctly state that no such management fee has been

1 postpetition.

2 And, informally, we have discussed that numerous times  
3 with debtor's professionals and management, and it has always  
4 been --

5 MS. KARASIK: That's from USA Capital.

6 MS. CARLYON: -- our agreement and understanding.

7 (Colloquy not on the record.)

8 MS. CARLYON: And I have verified when the  
9 monthly-operating reports were filed that we are not  
10 postpetition paying that management fee.

11 (Colloquy not on the record.)

12 MS. CARLYON: We would never agree to do so. It  
13 would create horrendous conflicts between these estates.

14 THE COURT: Okay.

15 MS. KARASIK: Okay.

16 (Colloquy not on the record.)

17 THE COURT: So is it held back for September or no?

18 MR. SCHWARTZER: No.

19 (Colloquy not on the record.)

20 MR. SCHWARTZER: Unless my client chooses  
21 (indiscernible).

22 (Colloquy not on the record.)

23 MS. KARASIK: Your Honor, they've collected the fees  
24 through June.

25 (Colloquy not on the record.)

1 MS. KARASIK: So I would ask that from July going  
2 forward because that was our understanding it would be  
3 escrowed.

4 THE COURT: Okay.

5 MS. KARASIK: And they can sit on USA Realty. I  
6 don't care --

7 MR. SCHWARTZER: September --

8 MS. KARASIK: -- what --

9 MR. SCHWARTZER: -- going forward would be acceptable  
10 to my client (indiscernible).

11 MS. KARASIK: My understanding was that we were going  
12 to do this from the time period that they had -- you know, the  
13 communication ended, so, basically, I mean, there's a  
14 miscommunication.

15 We thought that they were holding them the entire time in  
16 an escrow account.

17 (Colloquy not on the record.)

18 MS. KARASIK: We understand that was a  
19 miscommunication. They've took them through June. Okay.

20 It's a mistake. We understand it. We'll deal with that.  
21 We're dealing with that issue among many others --

22 THE COURT: In the Fund.

23 MS. KARASIK: -- in the joint term sheet.

24 So from July going forward, we should do it based on what  
25 the understanding was which was that they should sit in an

1 escrow account.

2 THE COURT: Well, it's just fungible dollars, so  
3 let's hold it from July.

4 MS. KARASIK: And then they --

5 THE COURT: You're going --

6 MS. KARASIK: And --

7 THE COURT: -- to have --

8 MS. KARASIK: And they --

9 THE COURT: -- to readjust some things.

10 MS. KARASIK: -- won't use it. That's just --

11 THE COURT: Yeah.

12 MS. KARASIK: -- going to set aside.

13 And at the end of the day, we either will have an  
14 agreement where it's dealt with or we'll fight about it. Our  
15 concern is we feel like we're paying twice.

16 We're paying, you know, Mesirow fees. For August, we're  
17 over -- together all the debtor's professional fees exceeded  
18 \$200,000, and then on top of it we've got to pay a management  
19 fee, and there's other issues.

20 So our view is let's not fight about it today. Let's just  
21 it set aside. Hopefully, within the next two weeks, it's going  
22 to be resolved. It won't be an issue, anymore.

23 MR. SCHWARTZER: Whatever the Court orders.

24 THE COURT: Okay. So I'll order to set it aside from  
25 July. I mean, it's just fungible dollars, so it will have to

1 be put back in, I mean, not used I guess.

2 MS. KARASIK: Right. It's just going --

3 MR. SCHWARTZER: It will just --

4 MS. KARASIK: -- to sit there --

5 MR. SCHWARTZER: -- be held in USA Realty Advisors --

6 MS. KARASIK: -- and not used.

7 MR. SCHWARTZER: -- and not used.

8 THE COURT: All right. That's fine.

9 MS. KARASIK: That's fine.

10 THE COURT: Yeah.

11 MS. KARASIK: Right.

12 MS. CARLYON: And I just was to make sure that we're  
13 not authorizing the debtor to go back and pay management fees  
14 that haven't been paid.

15 I understand there's a discrepancy between what people are  
16 saying the monthly-operating reports show, and we'll work that  
17 out, but saying that this is from July forward does not mean  
18 it's okay to go backwards --

19 THE COURT: No. This is just --

20 MS. CARLYON: -- and pay something --

21 THE COURT: -- an interim measure.

22 MS. CARLYON: -- that hasn't been paid.

23 THE COURT: Okay.

24 MS. KARASIK: And, your Honor, also, the budget has  
25 professional fees. It has allocations. It's fine to be in the

1 budget.

2 It's just everybody needs to understand these are  
3 estimates. Everybody's rights are reserved with respect to the  
4 allocations. I'd like the order to say that just so that's no  
5 confusion at the end of the day when we're going back and --

6 THE COURT: Right.

7 MS. KARASIK: -- you know, if we have to go back and  
8 argue about it. Of course, hopefully, that will all be  
9 resolved also in our joint term sheet.

10 THE COURT: Okay.

11 MS. KARASIK: Thank you, your Honor.

12 THE COURT: All right. So that will be the order.

13 Now, on the intercompany claims, I think that's been  
14 resolved by the suggestion that we just extend the bar date?

15 MS. JARVIS: Yes. Yeah. The committees and the  
16 debtors agree if the Judge --

17 THE COURT: Okay.

18 MS. JARVIS: If your Honor, would just extend the bar  
19 date, you know --

20 THE COURT: To when?

21 MS. JARVIS: -- indefinitely --

22 THE COURT: Or indefinitely.

23 MS. JARVIS: -- it would be okay.

24 THE COURT: I think that probably --

25 MS. JARVIS: Yeah.

1 THE COURT: -- does make more sense.

2 MS. JARVIS: Yeah. We planned on describing all  
3 these and working on these to put in the disclosure statement.  
4 There will be a resolution of those claims. We think that  
5 makes the most sense. It doesn't make any sense to spend  
6 time --

7 THE COURT: Right.

8 MS. JARVIS: -- on filing claims.

9 THE COURT: And, also, how in the world do you  
10 estimate? How in the world do you decide what they are?

11 MS. JARVIS: Exactly.

12 MS. CARLYON: Can we --

13 MS. JARVIS: It's just --

14 MS. CARLYON: I'm sorry. This is Candace Carlyon.  
15 Could we set this for a status at the conclusion of  
16 confirmation, rather than just say indefinitely --

17 THE COURT: Oh, okay.

18 MS. CARLYON: -- and then have to file a new motion  
19 and reserve it?

20 THE COURT: Sure. That's good, yeah. So we'll  
21 continue this 'til -- when do you think?

22 THE CLERK: (Indiscernible) the 15th.

23 THE COURT: Confirmation's December 5th?

24 THE CLERK: The 15th of December, Judge --

25 THE COURT: Okay.

1 THE CLERK: -- is when we --

2 THE COURT: So we'll continue this one to  
3 December 15th. Okay. All right. I think that's everything.

4 How are you coming on your disclosure statement? Are you  
5 getting that revised?

6 MS. JARVIS: Yes. We're working on it. We actually  
7 have originally submitted a stipulated order saying we would  
8 file it on October 31st.

9 We've had further conversations with the committees  
10 because of these intercompany issues, and we plan on filing a  
11 second stipulation to have it filed November 6th.

12 THE COURT: Okay.

13 MS. JARVIS: That will give us time to get these  
14 intercompany issues resolved and disclosed more fully --

15 THE COURT: And you're taking --

16 MS. JARVIS: -- in the disclosure statement.

17 THE COURT: -- the suggestions that I made,  
18 previously --

19 MS. JARVIS: Yes. Those --

20 THE COURT: -- such as --

21 MS. JARVIS: We're also including those. We've  
22 gotten comments from the SEC, and we're taking --

23 THE COURT: Okay.

24 MS. JARVIS: -- all of those into account. We made a  
25 detailed list and are working on those as well, your Honor.



1 THE COURT: Okay.

2 MS. JARVIS: Let me also just mention. As I said,  
3 the bid-procedures order was uploaded while we've been in  
4 hearing.

5 The amended asset purchase agreement with the comments  
6 that your Honor gave us last week will be filed today as well.  
7 It's been signed, and it will be filed today.

8 THE COURT: Okay. I probably won't be able to sign  
9 that order 'til at least Thursday, so is --

10 MS. JARVIS: I think the amended asset purchase  
11 agreement now gives us until -- it gives us some additional  
12 time, so I think that's sufficient.

13 (Colloquy not on the record.)

14 THE COURT: Okay. It would be helpful -- does  
15 anybody have a paper copy with them because --

16 MS. CARLYON: Yeah.

17 MS. JARVIS: Let me --

18 MS. CARLYON: Let me --

19 MS. JARVIS: Let me --

20 MS. CARLYON: -- find out.

21 MS. JARVIS: Let me just check a copy real quickly.

22 THE COURT: Because --

23 (Colloquy not on the record.)

24 MS. JARVIS: Yes. Now, what we negotiated is the  
25 breakup-fee order. It has to be entered by the Court no later

1 than November 8th, and no appeal shall be filed, thereafter,  
2 although it's --

3 THE COURT: Okay.

4 MS. JARVIS: Yeah. So it's November 8th.

5 THE COURT: Okay. All right. Mr. Garman.

6 MR. GARMAN: Your Honor, I have one housekeeping  
7 matter I'd like a little input from the Court on. I think  
8 there's unanimous agreement from all of us on this side from  
9 the U.S. Trustee, the four committees, and the debtor that we  
10 got ahead of ourselves on their proof-of-claim bar date  
11 particularly as it comes to direct lenders.

12 Mesirow has done an incredible job of gathering  
13 information and putting it into their database, and they've  
14 begun sending out the individual statements to direct lenders.

15 Unfortunately, they're not easy to read to say the least,  
16 and there are some errors on those statements, and they've been  
17 a work in progress meaning that they've changed from one month  
18 to the next, and it took me hours to understand how to  
19 interpret one of the easier direct-lender statements.

20 I think there's agreement, and we've talked to the  
21 debtor about this and spent a great deal of time with them last  
22 week.

23 The debtor has agreed to have another informational  
24 session much like they did at the 341 meeting at Cashman Center  
25 or some similar place and to provide additional information by

1 way of loan recaps and some other information that will make it  
2 much more possible to have a meaningful bar date.

3 What you're going to get now are thousands of unknown  
4 unliquidated claims that are going to kick off a huge  
5 claims-objection process at great cost.

6 I have a motion that I can file today to do this. But in  
7 looking at Rule 3003 and 9006, I don't think it's necessary. I  
8 certainly think under 9006 you have the ability.

9 Under 9006(b)(1), I think you have the ability without a  
10 motion to enlarge the time period for filing a proof of claim  
11 under 3003(c)(3). But to the extent you want me to file a  
12 motion, I'd be happy --

13 THE COURT: Now, we don't want --

14 MR. GARMAN: -- to do that.

15 THE COURT: -- to do it for anybody except direct  
16 lenders, right?

17 MR. GARMAN: That's the only constituency I think  
18 that has difficulty reading their statements or determining --

19 THE COURT: Because the problem --

20 MR. GARMAN: -- their claims.

21 THE COURT: -- is we need claims --

22 MR. GARMAN: I agree.

23 THE COURT: -- to understand what else is out there.

24 MR. GARMAN: Certainly, we need claims, and I think  
25 the unsecureds are in a position -- well, let me clarify. The

1 direct lenders need the ability to file claims.

2 Many of their claims are going to be unsecured claims for  
3 diverted principal or other things, so I want to make sure that  
4 we cover the totality of direct lenders.

5 But this is going to be a liquidating plan in which there  
6 is a finite pot of assets to distribute to the various classes  
7 of creditors however big they are.

8 I think that if we extend it 60 days we get some time to  
9 start this process that, hopefully, we can deal with it in that  
10 time. And if we can't, we can deal with the bar date again.

11 So I would ask that you enter an order or authorize us to  
12 upload an order extending the bar date from I believe it's  
13 November 13 now for another 60 days.

14 THE COURT: Is everybody in agreement, and how does  
15 that impact understanding what you've got and the confusion?

16 MS. JARVIS: Your Honor, we are in agreement, and I  
17 think the point is that we think by kind of extending this,  
18 having an informational meeting, getting more information to  
19 the direct lenders we're going to save money on the back end by  
20 not having to object to a lot of claims that probably shouldn't  
21 be filed.

22 This is a pot plan, so it's merely a situation of what  
23 percentage distribution would you get from a potential pot. We  
24 do know who the diverted principal lenders are, so we've  
25 already identified that. We know the amount of that.

1           This would be more, you know, in the nature of are there  
2           some shortfalls, you know, claimed by lenders that, you know,  
3           would actually have some claim.

4           We can probably do some kind of general estimation on that  
5           as well for purposes --

6           THE COURT: I mean, you clearly --

7           MS. JARVIS: -- of --

8           THE COURT: -- want to limit --

9           MS. JARVIS: -- a disclosure statement.

10          THE COURT: -- the Highland Capital situation.

11          MS. JARVIS: Yes.

12          THE COURT: So how do you tailor an order? I guess  
13          you would just limit it to those people who don't have a claim  
14          because they're not really -- they really don't have a claim.

15          Well, they do to the extent there's a breach of the  
16          servicing agreement. They don't have a claim because they're  
17          direct lenders.

18          MS. JARVIS: There's got to be some proximate cause  
19          and in many cases with respect to something that USA Commercial  
20          Mortgage did. And in many cases, there isn't going to be that  
21          link.

22          And it's an order to prevent and explain that to the  
23          direct lenders, so that, hopefully, we won't get a lot of  
24          claims --

25          THE COURT: But what do you do --

1 MS. JARVIS: -- that just say --

2 THE COURT: -- about voting if you don't have it done  
3 before the bar date? Now, the direct lenders won't vote,  
4 anyway, I guess because -- I don't know what you're going to do  
5 in that regard.

6 MS. JARVIS: How about if we submit --

7 THE COURT: I think --

8 MS. JARVIS: -- a stipulated order, you know, with  
9 respect to that? I tell you we've thought about this,  
10 your Honor, with respect to potentially filing a motion for  
11 estimation of claims for voting purposes because, you know, the  
12 -- for instance, if you did get a direct lender, one of them,  
13 that said, well, I think I was harmed, and you owe me  
14 \$50,000,000, you know, based on whatever, and another direct  
15 lender, you know, files something and says, well, I don't know.  
16 It's \$5.

17 So, you know, there is that issue as well, and our thought  
18 was to go forward and file like, probably, a motion for  
19 estimation --

20 THE COURT: I mean --

21 MS. JARVIS: -- of claims --

22 THE COURT: -- you're absolutely right. It's not an  
23 issue, and, perhaps --

24 MS. JARVIS: -- for voting.

25 THE COURT: -- you know, I shouldn't have said the

1 bar date, but, well, you know, the problem we first had was  
2 Highland Capital, and --

3 MS. JARVIS: No. I do think we needed a bar date, I  
4 mean, there because the direct lenders are kind of -- they're a  
5 more amorphous group, but, you know, there are other claims  
6 that we need to know because we can estimate those.

7 THE COURT: Sure. And the Funds --

8 MS. JARVIS: We can't estimate --

9 THE COURT: -- you need to know --

10 MS. JARVIS: -- other claims.

11 THE COURT: -- who was claiming what proof of  
12 interest and how much their proof of interest is.

13 MR. GARMAN: The direct-lender claims are coming into  
14 focus, and here's what's happening. We acknowledge and we  
15 agree that most direct lenders probably don't have claims  
16 against USA Capital simply as the servicer.

17 And as we proceed in the coming months with another  
18 300,000,000 in principal being paid off and direct lenders  
19 being paid off, that's just an entire pool that we don't have  
20 to deal with.

21 But there are finite loans that in which there was fairly  
22 clearly misrepresentations or actual fraud committed upon  
23 direct lenders to induce them to enter into loans, for example.

24 To clarify what I'm asking for, I'd like to extend the bar  
25 date for anyone whose claim arose out of their capacity as a

1 direct lender.

2 There's maybe unsecured claims from diverted  
3 principal. There may be fraud claims that arise out of these  
4 loans.

5 But as we're making progress, we really are seeing that  
6 this pool of claims is coming into focus, and we're going to  
7 have a much better grasp of what it is even in dealing with our  
8 plan.

9 I think that we can circulate a stipulated order amongst  
10 this group that will deal both with the plan-context issues and  
11 deal with the bar date and get that before the Court --

12 THE COURT: Okay.

13 MR. GARMAN: -- by the end of the week.

14 THE COURT: Well, I'd certainly be willing to  
15 consider a stipulated order.

16 MS. JARVIS: Yes.

17 THE COURT: I mean, you know, I'll have to --

18 MS. CARLYON: See it?

19 THE COURT: Yeah. And, certainly, you could just  
20 service notice on a limited -- if you wanted to file a motion,  
21 you'd just do a limited notice.

22 But I'd want a proposal about what you want as opposed to  
23 in general because we've got all these -- and, again, this is  
24 such a unique case. I mean, it's just --

25 MS. JARVIS: We --



1 THE COURT: -- different.

2 MS. JARVIS: We can --

3 THE COURT: I mean, it's --

4 MS. JARVIS: We can do that, your Honor.

5 THE COURT: So --

6 MR. GARMAN: We will do that today and tomorrow  
7 because the bar date is coming up of I think it's the 13th or  
8 14th.

9 MS. JARVIS: Yes.

10 MR. GARMAN: And we want --

11 MS. JARVIS: It's the 13th.

12 MR. GARMAN: -- to get this information out there  
13 before the Court gets another 500 --

14 THE COURT: Okay.

15 MR. GARMAN: -- unknown proofs of claim filed.

16 THE COURT: Okay. Okay. All right. Well, we'll see  
17 you back on the 13th, then.

18 MS. CARLYON: Thank you, your Honor.

19 THE COURT: All right.

20 MS. KARASIK: Thank you --

21 MS. JARVIS: Thank you --

22 MS. KARASIK: -- your Honor.

23 THE COURT: Thank you.

24 MS. JARVIS: -- your Honor.

25 (Colloquy not on the record.)

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THE CLERK: All rise.  
(Court concluded at 01:15:54 p.m.)

1 I certify that the foregoing is a correct transcript  
2 from the electronic sound recording of the proceedings in  
3 the above-entitled matter.  
4  
5

6 /s/ Lisa L. Cline

08/17/10

7 Lisa L. Cline, Transcriptionist

Date